

Halsbury's Laws of England/CLUBS (VOLUME 13 (2009) 5TH EDITION)/1. CONSTITUTION, MANAGEMENT AND PROPERTY/(1) NATURE OF CLUBS AND SPECIAL LEGISLATION/201. Definition of 'club'.

## CLUBS (VOLUME 13 (2009) 5TH EDITION)

### 1. CONSTITUTION, MANAGEMENT AND PROPERTY

#### (1) NATURE OF CLUBS AND SPECIAL LEGISLATION

##### 201. Definition of 'club'.

A club, except a proprietary club<sup>1</sup> or an investment club<sup>2</sup>, may be defined as a society of persons associated together, not for the principal purposes of trade<sup>3</sup>, but for social reasons, the promotion of politics, sport, art, science or literature, or for any other lawful purpose; however, trading activities will not destroy the nature of a club if they are merely incidental to the club's purposes<sup>4</sup>. The association must be private<sup>5</sup> and will often have some element of permanence<sup>6</sup>. The purposes for which a club exists may be altered or modified, and there is no rule of law which requires a club to fulfil each and every separate purpose for which it was originally formed<sup>7</sup>. Once the mutual assent of the members has been secured, the doctrine of ultra vires has no place with respect to the activities of such an association<sup>8</sup>.

1 See PARAS 209-210.

2 See PARA 213.

3 Cf *IRC v Eccentric Club Ltd* [1924] 1 KB 390, CA; *Automobile Pty Ltd v Brown (Valuation Officer)* [1955] 2 All ER 214, [1955] 1 WLR 573, CA.

4 See *Carlisle and Silloth Golf Club v Smith* [1913] 3 KB 75, CA (where an unincorporated members' golf club was held liable to pay income tax on profits derived from visitors' green fees); *Newton-le-Willows Cricket etc Club v Newton-le-Willows UDC Rating Officer* (1966) 12 RRC 32; and see PARA 285 note 8. As to registered working men's clubs see PARA 211.

5 A volunteer military unit, established under statute, is not a members' club: *Re Edis's Trusts, Campbell-Smith v Davies* [1972] 2 All ER 769, [1972] 1 WLR 1135.

6 See eg the Gambling Act 2005 s 266(1)(c) (a 'members' club' means a club which, among other matters, is not established with the purpose of functioning only for a limited period of time); and **LICENSING AND GAMBLING** vol 68 (2008) PARA 578.

7 See *Thellusson v Viscount Valentia* [1907] 2 Ch 1, CA.

8 See *Institution of Mechanical Engineers v Cane (Valuation Officer)* [1961] AC 696 at 725, [1960] 3 All ER 715 at 729, HL, per Lord Denning.

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## 202. Jurisdiction of court over constitution of club.

The court does not take cognisance of the rules of a voluntary society, entered into merely for the regulation of its own affairs, save to protect the disposal and administration of property<sup>1</sup>. The rules of a club may effectively provide that the governing body is to be the final arbiter on questions of fact but cannot prevent decisions on questions of law being determined by the courts<sup>2</sup>.

1 *Forbes v Eden* (1867) LR 1 Sc & Div 568 at 581, HL, per Lord Cranworth.

2 *Baker v Jones* [1954] 2 All ER 553, [1954] 1 WLR 1005; *Leigh v National Union of Railwaymen* [1970] Ch 326, [1969] 3 All ER 1249; *Enderby Town Football Club Ltd v Football Association Ltd* [1971] Ch 591, [1971] 1 All ER 215, CA (applying dicta in *Lee v Showmen's Guild of Great Britain* [1952] 2 QB 329, [1952] 1 All ER 1175, CA). As to judicial control of the actions of club committees see **JUDICIAL REVIEW** vol 61 (2010) PARA 606.

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## 203. Activities attracting special legislation.

Special laws may apply to clubs by reason of their objects<sup>1</sup>. Thus a member of an approved rifle club, miniature rifle club or muzzle-loading pistol club<sup>2</sup> may, without holding a firearm certificate<sup>3</sup>, have in his possession a rifle and ammunition when engaged as a member of the club in connection with target shooting<sup>4</sup>.

The protection of copyright<sup>5</sup> in relation to the performance of a work in public may extend to its performance in a club<sup>6</sup>. Copyright in a sound recording is not, however, infringed where the recording is provided as part of the activities or for the benefit of a non-profit-making club, the main objects of which are charitable or are otherwise concerned with the advancement of religion, education or social welfare, provided that certain other statutory conditions are fulfilled<sup>7</sup>. Generally, the public performance of a broadcast<sup>8</sup> of a literary, dramatic or musical work to a paying audience is restricted by copyright<sup>9</sup> but in that connection no account is taken of persons admitted as members of a club where the payment is only for membership and the provision of facilities for receiving the broadcast is only incidental to the main purpose of the club<sup>10</sup>.

The use of club premises for entertainment, and the supply of alcohol to members or guests, is controlled by the Licensing Act 2003<sup>11</sup>, and gambling on club premises is controlled by the Gambling Act 2005<sup>12</sup>.

A club may qualify for charitable status if its object is to provide, or assist in the provision of, facilities for recreation or other leisure-time occupation, and if the facilities are provided in the interests of social welfare<sup>13</sup>. This applies in particular to the provision of facilities at village halls, community centres and women's institutes, and to the provision and maintenance of grounds and buildings to be used for purposes of recreation or leisure-time occupation, and extends to the provision of facilities for those purposes by the organising of any activity<sup>14</sup>. The requirement that the facilities are provided in the interests of social welfare cannot, however, be satisfied if the following basic conditions are not met<sup>15</sup>:

- (1) that the facilities are provided with the object of improving the conditions of life for the persons for whom the facilities are primarily intended; and

(2) that either:

1. (a) those persons have need of the facilities by reason of their youth, age, infirmity or disability, poverty, or social and economic circumstances; or
2. (b) the facilities are to be available to members of the public at large or to male, or to female, members of the public at large<sup>16</sup>.

A registered sports club<sup>17</sup> cannot be a charity<sup>18</sup>. The fiscal advantages of charitable status<sup>19</sup>, and the statutory regulation of charities<sup>20</sup>, are discussed elsewhere in this work<sup>21</sup>.

1 For example, the Trade Descriptions Act 1968 does not apply to transactions with members in members' clubs: *John v Matthews* [1970] 2 QB 443, [1970] 2 All ER 643, DC. Golf clubs whose courses include common land may be particularly concerned with the validity of byelaws of the conservators of the common: *Mitcham Common Conservators v Cox* [1911] 2 KB 854, DC (a regulation of a common held to be void for inequality in giving preference to members of a golf club). In general a servant of such a golf club who follows the club's instructions in enforcing a particular regulation or byelaw is not thereby guilty of obstructing a non-member in the use of the common: *Harris v Harrison* (1914) 111 LT 534, DC. As to the regulation of commons generally see **COMMONS** vol 13 (2009) PARA 586 et seq.

2 'Muzzle-loading pistol club' means a club where muzzle-loading pistols are used for target shooting; and 'muzzle-loading pistol' means a pistol designed to be loaded at the muzzle end of the barrel or chamber with a loose charge and a separate ball (or other missile): Firearms (Amendment) Act 1988 s 15(12) (s 15 substituted by the Firearms (Amendment) Act 1997 s 45(1)).

3 As to the normal requirement for a firearm certificate see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 634.

4 See the Firearms (Amendment) Act 1988 s 15(1), (10), (11) (as substituted (see note 2); amended by SI 1999/1750). As to the approval of clubs for these purposes see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 651.

5 See generally the Copyright, Designs and Patents Act 1988 s 19; and **COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS** vol 9(2) (2006 Reissue) PARA 324.

6 A performance of dance music in a club where members and guests are admitted is capable of being a performance in public: *Harms (Inc) Ltd and Chappell & Co Ltd v Martans Club* [1927] 1 Ch 526, CA. For a case which was 'borderline' see *Duck v Bates* (1884) 13 QBD 843, 48 JP 501, CA.

7 See the Copyright, Designs and Patents Act 1988 Sch 2 para 15; and **COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS** vol 9(2) (2006 Reissue) PARA 694.

8 As to the meaning of 'broadcast' see **COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS** vol 9(2) (2006 Reissue) PARA 89.

9 See note 5.

10 See the Copyright, Designs and Patents Act 1988 Sch 2 para 18(1), (3)(b); and **COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS** vol 9(2) (2006 Reissue) PARA 699.

11 See PARAS 261-262; and **LICENSING AND GAMBLING**.

12 See PARA 261; and **LICENSING AND GAMBLING**.

13 See the Recreational Charities Act 1958 s 1(1). Nothing in s 1 is to be taken to derogate from the principle that a trust or institution, to be charitable, must be for the public benefit: s 1(1). As to the public benefit test for the purposes of the Charities Act 2006 see s 3; and **CHARITIES** vol 8 (2010) PARAS 6-7.

14 Recreational Charities Act 1958 s 1(3).

15 Recreational Charities Act 1958 s 1(2) (substituted by the Charities Act 2006 s 5(1), (2)).

16 Recreational Charities Act 1958 s 1(2A) (added by the Charities Act 2006 s 5(1), (2)).

17 'Registered sports club' means a club for the time being registered under the Finance Act 2002 Sch 18 (relief for community amateur sports clubs: see PARAS 208, 283); Charities Act 2006 s 5(5).

18 See the Charities Act 2006 s 5(4).

19 See in particular **CAPITAL GAINS TAXATION** vol 5(1) (2004 Reissue) PARA 279 et seq; **INCOME TAXATION** vol 23(1) (Reissue) PARA 656 et seq; **INHERITANCE TAXATION** vol 24 (Reissue) PARAS 504-506, 520; **VALUE ADDED TAX** vol 49(1) (2005 Reissue) PARAS 129, 166 et seq.

20 See generally **CHARITIES**.

21 See notes 19-20.

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## **(2) TYPES OF CLUBS**

### **(i) In general**

#### **204. Classification of clubs.**

There are various kinds of clubs, which are governed, according to the nature of their constitution, by different rules of law. They may conveniently be divided as follows: (1) members' clubs<sup>1</sup>; (2) proprietary clubs<sup>2</sup>; (3) working men's clubs registered under the Friendly Societies Act 1974 or the Industrial and Provident Societies Acts 1965 to 1968<sup>3</sup>; (4) miners' welfare institutes as defined for the purposes of the Licensing Act 2003 and the Gambling Act 2005<sup>4</sup>; (5) community amateur sports clubs registered under the Finance Act 2002<sup>5</sup>; (6) learned societies which are literary and scientific institutions for the purposes of the Literary and Scientific Institutions Act 1854<sup>6</sup>; (7) investment clubs, which are more properly described as a type of partnership<sup>7</sup>; and (8) mutual insurance clubs<sup>8</sup>.

1 See PARAS 201, 205-207.

2 See PARAS 209-210.

3 See PARA 211.

4 See PARA 212.

5 See PARA 208.

6 See PARA 215.

7 See PARA 213.

8 See PARA 214.

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## (ii) Members' Clubs

### 205. Unincorporated members' clubs.

An unincorporated members' club is a society of persons each of whom contributes to the funds out of which the expenses of conducting the society are paid<sup>1</sup>. The contribution is generally made by means of entrance fees or subscriptions, or both. The society is not a partnership, because the members are not associated with a view to profit<sup>2</sup>. It is not recognised as having any legal existence apart from the members of which it is composed<sup>3</sup>.

Subject to any rule to the contrary, the property and funds of the club belong to the members for the time being jointly in equal shares<sup>4</sup>; and if provisions are supplied to a member, at a given price, this does not constitute a sale, but is in effect a release to that member by the other members of their interest in the goods supplied<sup>5</sup>. The transaction is not of a commercial nature and, consequently, is not controlled by the provisions of the Trade Descriptions Act 1968<sup>6</sup>. The peculiar nature of the transaction is of particular significance in relation to the supply of alcohol to members or guests<sup>7</sup>.

The ultimate management and control of the club and its property is in the hands of the members. The business of the club is either conducted by them jointly in general meeting, or, as is usually the case, delegated by them to committees in accordance with the rules.

The Gambling Act 2005 contains a particular definition of a 'members' club' for the purposes of that Act but does not specify whether such a club is to be unincorporated or incorporated<sup>8</sup>. An unincorporated members' club may satisfy the conditions for obtaining a club premises certificate under the Licensing Act 2003<sup>9</sup>.

1 The rules of a club may provide for the election of honorary members who make no contribution to the club funds, and are usually precluded from having any voice in the management.

2 *Fleming v Hector* (1836) 2 M & W 172; and see the Partnership Act 1890 s 1(1); and **PARTNERSHIP** vol 79 (2008) PARA 1. See also *Re St James's Club* (1852) 2 De GM & G 383; *Blackpool Marton Rotary Club v Martin (Inspector of Taxes)* [1988] STC 823 (affd [1990] STC 1, CA).

3 *Steele v Gourley and Davis* (1886) 3 TLR 118 at 119 per Day J; affd (1887) 3 TLR 772, CA.

4 The interest of a member in the property of the club is not transferable or transmissible, and continues only during membership.

5 *Graff v Evans* (1882) 8 QBD 373 at 378-379, DC. Similarly there is no hiring where members use a vehicle belonging to themselves: see *Wurzel v Houghton Main Home Delivery Service Ltd* [1937] 1 KB 380, [1936] 3 All ER 311, DC. For statutory recognition see eg the Licensing Act 2003 s 1(1)(b); the text and note 7; and **LICENSING AND GAMBLING** vol 67 (2008) PARA 53 note 18.

6 *John v Matthews* [1970] 2 QB 443, [1970] 2 All ER 643, DC. As to the Trade Descriptions Act 1968 generally see **SALE OF GOODS AND SUPPLY OF SERVICES** vol 41 (2005 Reissue) PARA 471 et seq.

7 See PARA 262.

8 See the Gambling Act 2005 s 266; and **LICENSING AND GAMBLING** vol 68 (2008) PARA 578.

9 As to club premises certificates see **LICENSING AND GAMBLING** vol 67 (2008) PARA 85 et seq.

Halsbury's Laws of England/CLUBS (VOLUME 13 (2009) 5TH EDITION)/1. CONSTITUTION, MANAGEMENT AND PROPERTY/(2) TYPES OF CLUBS/(ii) Members' Clubs/206. Incorporated members' clubs.

## **206. Incorporated members' clubs.**

A members' club incorporated under the companies legislation<sup>1</sup> enjoys the advantages incidental to incorporation as a company, especially that of suing and being sued as a legal entity. The company may be limited by shares or by guarantee<sup>2</sup>, and in either case the liability may be merely nominal in amount. The most convenient method, when a members' club is incorporated, is to register it as a company limited by guarantee, the members of the club for the time being constituting the company.

If a members' club is incorporated as a company limited by shares, the articles of association to some extent take the place of club rules, and may be supplemented by byelaws. If it is registered as an association limited by guarantee, the rules governing the relations of the members between themselves are generally appended to the memorandum of association, and they together form the regulations of the company. In either case, the objects of the club are set forth in the memorandum of association. However, this should be distinguished from a club which is owned by a company; the relations of the members of the club between themselves are governed by club rules or byelaws, as in the case of an unincorporated members' club<sup>3</sup>, and the rights and liabilities of the shareholders in the company depend upon the memorandum and articles of association, as in the case of an ordinary trading company.

Part 2 of the Companies (Audit, Investigations and Community Enterprise) Act 2004<sup>4</sup> introduces a new type of company, a community interest company<sup>5</sup>. A company limited by shares or a company limited by guarantee and not having a share capital may be formed as or become a community interest company, and a company limited by guarantee and having a share capital may become a community interest company<sup>6</sup>. Such a company is not a charity<sup>7</sup> and must satisfy a number of statutory requirements<sup>8</sup> including the community interest test<sup>9</sup>. For the purposes of the community interest test, an activity is to be treated as not being an activity which a reasonable person might consider is an activity carried on for the benefit of the community if, or to the extent that, a reasonable person might consider that that activity benefits only the members of a particular body or the employees of a particular employer<sup>10</sup>.

Certain members' clubs, for example the Jockey Club and the Law Society, are incorporated by royal charter<sup>11</sup>.

The Gambling Act 2005 contains a particular definition of a 'members' club' for the purposes of that Act but does not specify whether such a club is to be unincorporated or incorporated<sup>12</sup>. An incorporated members' club may satisfy the conditions for obtaining a club premises certificate under the Licensing Act 2003<sup>13</sup>.

1 As to the method of forming an incorporated company under the Companies Act 1985 see s 1 (repealed with effect from 1 October 2009 by the Companies Act 2006 Sch 16, and replaced as from that date by provisions of the Companies Act 2006 ss 3-5, 7); and **COMPANIES** vol 14 (2009) PARA 102. As to the prohibition on registration of companies by certain names see PARA 207.

2 See the Companies Act 1985 s 1(2)(b) (repealed with effect from 1 October 2009: see note 1); the Companies Act 2006 s 3(1), (3) (in force with effect from 1 October 2009); and **COMPANIES** vol 14 (2009) PARA 102.

3 See PARA 205.

4 In the Companies (Audit, Investigations and Community Enterprise) Act 2004 Pt 2 (ss 26-63): see **COMPANIES** vol 14 (2009) PARA 82 et seq.

5 See **COMPANIES** vol 14 (2009) PARA 82 et seq.

6 Companies (Audit, Investigations and Community Enterprise) Act 2004 s 26(1), (2); and see the Companies Act 2006 s 6 (in force from 1 October 2009).

7 See the Companies (Audit, Investigations and Community Enterprise) Act 2004 s 26(3)(a) (amended by SI 2007/1093).

8 See the Companies (Audit, Investigations and Community Enterprise) Act 2004 ss 30-35; and the Community Interest Company Regulations 2005, SI 2005/1788.

9 A company satisfies the community interest test if a reasonable person might consider that its activities are being carried on for the benefit of the community: Companies (Audit, Investigations and Community Enterprise) Act 2004 s 35(2). An object stated in the memorandum of a company is a community interest object of the company if a reasonable person might consider that the carrying on of activities by the company in furtherance of the object is for the benefit of the community: s 35(3). Regulations may provide that activities of a description prescribed by the regulations are to be treated as being, or as not being, activities which a reasonable person might consider are activities carried on for the benefit of the community: s 35(4). 'Community' includes a section of the community (whether in the United Kingdom or anywhere else); and regulations may make provision about what does, does not or may constitute a section of the community: s 35(5) (amended by SI 2007/1093). As to the community interest test see further the Community Interest Company Regulations 2005, SI 2005/1788, regs 3-6; the text and note 10; and **COMPANIES** vol 14 (2009) PARA 87.

10 Community Interest Company Regulations 2005, SI 2005/1788, reg 4.

11 As to incorporation by royal charter see **CORPORATIONS** vol 9(2) (2006 Reissue) PARA 1128. For a discussion of the private law functions of such bodies see *R v Disciplinary Committee of the Jockey Club, ex p Aga Khan* [1993] 2 All ER 853 at 1875-876, [1993] 1 WLR 909 at 933, CA, per Hoffmann LJ. As to the Law Society see further **LEGAL PROFESSIONS** vol 65 (2008) PARA 604 et seq.

12 See the Gambling Act 2005 s 266; and **LICENSING AND GAMBLING** vol 68 (2008) PARA 578.

13 As to club premises certificates see **LICENSING AND GAMBLING** vol 67 (2008) PARA 85 et seq.

## UPDATE

### 206 Incorporated members' clubs

NOTE 8--SI 2005/1788 amended: SI 2009/1942.

Halsbury's Laws of England/CLUBS (VOLUME 13 (2009) 5TH EDITION)/1. CONSTITUTION, MANAGEMENT AND PROPERTY/(2) TYPES OF CLUBS/(ii) Members' Clubs/207. Name of incorporated club.

### 207. Name of incorporated club.

Under the Companies Act 1985, where an incorporated club is formed for promoting some useful object and it is intended to prohibit the payment of any dividend to the members, the club may be registered as a company limited by guarantee but without the word 'limited'<sup>1</sup>, and the word 'club' may be used as part of the name instead of the word 'company'<sup>2</sup>. As from 1 October 2009, the Companies Act 2006 exempts an incorporated club from the requirement to have a name ending with 'limited' or a permitted alternative<sup>3</sup> if:

- (1) it is a charity<sup>4</sup>;
- (2) it is exempted from that requirement by regulations made by the Secretary of State<sup>5</sup>; or
- (3) it meets the conditions specified<sup>6</sup> for the continuation of an existing exemption<sup>7</sup>.

No name will be allowed which in the opinion of the Secretary of State is offensive and names suggesting royal patronage or connection with a government are not ordinarily allowed<sup>8</sup>.

The name of a community interest company<sup>9</sup> which is not a public company must end with the words 'community interest company', or 'cic', or the Welsh equivalents<sup>10</sup>. There is a penalty for the improper use of such a name<sup>11</sup>.

1 See the Companies Act 1985 s 30(1)-(4) (repealed with effect from 1 October 2009 by the Companies Act 2006 Sch 16); and **COMPANIES** vol 14 (2009) PARA 201.

2 There is no provision in the Companies Act 1985 requiring the word 'company' to be included in a name.

3 It is exempt from the Companies Act 2006 s 59 (in force with effect from 1 October 2009).

4 As to clubs which may qualify for charitable status see PARA 201.

5 See the Company and Business Names (Miscellaneous Provisions) Regulations 2009, SI 2009/1085, reg 3. The 2009 Regulations come into force on 1 October 2009: reg 1(1). As to the office of Secretary of State see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) para 355.

6 It is the conditions specified in the Companies Act 2006 s 61 (continuation of existing exemption for companies limited by shares) or s 62 (continuation of existing exemption: companies limited by guarantee) (both in force with effect from 1 October 2009).

7 Companies Act 2006 s 60(1) (in force with effect from 1 October 2009).

8 See the Companies Act 1985 ss 26, 29 (both repealed with effect from 1 October 2009 by the Companies Act 2006 Sch 16, and replaced as from that date by provisions of the Companies Act 2006 ss 53-56, 66); and **COMPANIES** vol 14 (2009) PARA 196 et seq.

9 As to community interest companies see PARA 206; and **COMPANIES** vol 14 (2009) PARA 82 et seq.

10 Companies (Audit, Investigations and Community Enterprise) Act 2004 s 33(1), (2).

11 See the Companies Act 1985 s 34A (added by the Companies (Audit, Investigations and Community Enterprise) Act 2004 Sch 6 paras 1, 6; repealed with effect from 1 October 2009 by the Companies Act 2006 Sch 16). Under the Companies Act 2006, the Secretary of State may make provision by regulations prohibiting the use in a company name of specified words, expressions or other indications: (1) that are associated with a particular type of company or form of organisation; or (2) that are similar to words, expressions or other indications associated with a particular type of company or form of organisation: s 65(1) (in force with effect from 1 October 2009). See the Company and Business Names (Miscellaneous Provisions) Regulations 2009, SI 2009/1085, regs 2, 4-8, Schs 1-3, coming into force on 1 October 2009 (see note 5). See further **COMPANIES** vol 14 (2009) PARAS 197, 201, 204, 205.

Halsbury's Laws of England/CLUBS (VOLUME 13 (2009) 5TH EDITION)/1. CONSTITUTION, MANAGEMENT AND PROPERTY/(2) TYPES OF CLUBS/(ii) Members' Clubs/208. Community amateur sports clubs.

## 208. Community amateur sports clubs.

A club is entitled to be registered as a community amateur sports club under Schedule 18 to the Finance Act 2002 if it is, and is required by its constitution to be, a club that:

- (1) is open to the whole community<sup>1</sup>;
- (2) is organised on an amateur basis<sup>2</sup>; and



(3) has as its main purpose the provision of facilities for, and promotion of participation in, one or more eligible sports<sup>3</sup>.

Registration as a community amateur sports club confers fiscal advantages similar to those enjoyed by a charity<sup>4</sup>; but such a club cannot be a charity<sup>5</sup>.

A community amateur sports club may satisfy the conditions for obtaining a club premises certificate under the Licensing Act 2003<sup>6</sup>.

1 For these purposes, a club is open to the whole community if (1) membership of the club is open to all without discrimination; (2) the facilities of the club are available to members without discrimination; and (3) any fees are set at a level that does not pose a significant obstacle to membership or use of the club's facilities: Finance Act 2002 Sch 18 para 2(1). 'Discrimination' includes indirect discrimination and includes, in particular: (a) discrimination on grounds of ethnicity, nationality, sexual orientation, religion or beliefs; (b) discrimination on grounds of sex, age or disability, except as a necessary consequence of the requirements of a particular sport: Sch 18 para 2(2). Schedule 18 para 2 does not, however, prevent a club from having different classes of membership depending on (i) the age of the member; (ii) whether the member is a student; (iii) whether the member is waged or unwaged; (iv) whether the member is a playing or a non-playing member; (v) how far from the club the member lives; (vi) any restriction on the days or times when the member has access to the club's facilities: Sch 18 para 2(3).

2 For these purposes, a club is organised on an amateur basis if (1) it is non-profit-making; (2) it provides for members and their guests only the ordinary benefits of an amateur sports club; and (3) its constitution provides for any net assets on the dissolution of the club to be applied for approved sporting or charitable purposes: Finance Act 2002 Sch 18 para 3(1). A club is 'non-profit-making' if its constitution requires any surplus income or gains to be reinvested in the club and does not permit any distribution of club assets, in cash or in kind, to members or third parties; but this does not prevent donations by the club to charities or to other clubs that are registered as community amateur sports clubs: Sch 18 para 3(2). The ordinary benefits of an amateur sports club are: (a) provision of sporting facilities; (b) reasonable provision and maintenance of club-owned sports equipment; (c) provision of suitably qualified coaches; (d) provision, or reimbursement of the costs, of coaching courses; (e) provision of insurance cover; (f) provision of medical treatment; (g) reimbursement of reasonable travel expenses incurred by players and officials travelling to away matches; (h) reasonable provision of post-match refreshments for players and match officials; (i) sale or supply of food or drink as a social adjunct to the sporting purposes of the club: Sch 18 para 3(3). Schedule 18 para 3(3) does not prevent a club from entering into an agreement with a member for the supply to the club of goods or services, or from employing and paying remuneration to staff who are also members of the club, provided the terms are approved by the governing body of the club without the member concerned being present and are agreed with the member on an arm's length basis: Sch 18 para 3(4). In relation to the application of the net assets on the dissolution of the club, 'approved sporting or charitable purposes' means such of the following as may be approved by the members of the club in general meeting or by the members of the governing body of the club: (i) the purposes of the governing body of an eligible sport for the purposes of which the club existed, for use in related community sport; (ii) the purposes of another club that is registered as a community amateur sports club; (iii) the purposes of a charity: Sch 18 para 3(5).

3 Finance Act 2002 Sch 18 para 1. 'Eligible sport' means a sport that is designated for these purposes by Treasury order made by statutory instrument; and a sport may be so designated by reference to its appearing in a list maintained by a body specified in the order: see Sch 18 para 14. A sport is designated as an eligible sport for the purposes of Sch 18 where that sport appears on the list maintained by the National Sports Councils of activities recognised by them: Relief for Community Amateur Sports Clubs (Designation) Order 2002, SI 2002/1966, art 2. 'The National Sports Councils' means UK Sport, Sport England, Sport Scotland, the Sports Council of Wales and the Sports Council of Northern Ireland: art 3.

4 See the Finance Act 2002 Sch 18 paras 4-9; and PARA 283. Such a club may also benefit from discretionary relief in relation to rating: see PARA 285.

5 See the Charities Act 2006 s 5(4).

6 As to club premises certificates see **LICENSING AND GAMBLING** vol 67 (2008) PARA 85 et seq.

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### (iii) Proprietary Clubs

#### 209. Unincorporated proprietary clubs.

An unincorporated proprietary club is of an entirely different nature from a members' club<sup>1</sup>. The property and funds of the club belong to the proprietor, who usually conducts it with a view to profit<sup>2</sup>. The members, in consideration of the payment by them to the proprietor of entrance fees and subscriptions, are entitled to make such use of the premises and property, and to exercise such other rights and privileges, as the contract between them and the proprietor justifies.

The management of an unincorporated proprietary club may be given wholly or in part to a committee of the members over which the proprietor will usually reserve ultimate control.

An unincorporated proprietary club which is conducted with a view to profit does not satisfy the conditions for obtaining a club premises certificate under the Licensing Act 2003<sup>3</sup>. Nor does it meet the definition of a 'members' club' for the purposes of the Gambling Act 2005<sup>4</sup>, meaning that it is not eligible for a club gaming permit under that Act<sup>5</sup>. It may, however, fall within the statutory definition of a 'commercial club' for the purposes of the 2005 Act<sup>6</sup>; it may thus be eligible for a club machine permit under that Act<sup>7</sup>, and may also fulfil the conditions for conducting exempt gaming<sup>8</sup>.

1 As to members' clubs see PARAS 201, 205-208.

2 The name of the club that a proprietor has formed may be protected in a passing-off claim: *Ad-Lib Club Ltd v Granville* [1971] 2 All ER 300. See also **TRADE MARKS AND TRADE NAMES** vol 48 (2007 Reissue) PARA 309. The proprietor of a club formed for the purpose of exhibiting and selling pictures was held not to be carrying on the business of a picture dealer so as to exempt the pictures exhibited on the club premises from distress for rent: *Challoner v Robinson* [1908] 1 Ch 49 at 60, CA, per Cozens-Hardy MR. The common law remedy of distress for rent is, however, prospectively abolished by the Tribunals, Courts and Enforcement Act 2007: see PARA 274 text and note 9.

3 As to club premises certificates see **LICENSING AND GAMBLING** vol 67 (2008) PARA 85 et seq.

4 See the Gambling Act 2005 s 266; and **LICENSING AND GAMBLING** vol 68 (2008) PARA 578.

5 As to club gaming permits see **LICENSING AND GAMBLING** vol 68 (2008) PARA 581 et seq.

6 As to the meaning of 'commercial club' see the Gambling Act 2005 s 267; and **LICENSING AND GAMBLING** vol 68 (2008) PARA 579.

7 As to club machine permits see **LICENSING AND GAMBLING** vol 68 (2008) PARA 582 et seq.

8 As to exempt gaming see the Gambling Act 2005 s 269; and **LICENSING AND GAMBLING** vol 68 (2008) PARA 665.

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#### 210. Incorporated proprietary clubs.

In the case of an incorporated proprietary club, the relations between the members of the club and the company are governed by the same rules as those which govern the relations between the members and proprietor of an unincorporated proprietary club<sup>1</sup>. An incorporated proprietary club, provided it is able to comply with the statutory requirements, may be registered as a limited liability company without use of the word 'limited'<sup>2</sup>.

Such a club which is conducted with a view to profit does not satisfy the conditions for obtaining a club premises certificate under the Licensing Act 2003<sup>3</sup>. It may, however, fall within the statutory definition of a 'commercial club' for the purposes of the Gambling Act 2005<sup>4</sup>; it may thus be eligible for a club machine permit under that Act<sup>5</sup>, and may also fulfil the conditions for conducting exempt gaming<sup>6</sup>.

1 See PARA 209. Non-proprietary members may be excluded by the rules from any share in the management of the club: *Cole v Merton Park (Wimbledon) Golf Club Ltd* (1927) 43 TLR 400.

2 See PARA 207.

3 As to club premises certificates see **LICENSING AND GAMBLING** vol 67 (2008) PARA 85 et seq.

4 As to the meaning of 'commercial club' see the Gambling Act 2005 s 267; and **LICENSING AND GAMBLING** vol 68 (2008) PARA 579.

5 As to club machine permits see **LICENSING AND GAMBLING** vol 68 (2008) PARA 582 et seq.

6 As to exempt gaming see the Gambling Act 2005 s 269; and **LICENSING AND GAMBLING** vol 68 (2008) PARA 665.

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#### **(iv) Registered Working Men's Clubs and Miners' Welfare Institutes**

##### **211. Working men's clubs.**

Working men's clubs, which are defined as 'societies for purposes of social intercourse, mutual helpfulness, mental and moral improvement, and rational recreation'<sup>1</sup>, could be registered under the Friendly Societies Act 1974<sup>2</sup>, and as such were subject to the legislation governing friendly societies generally<sup>3</sup>. Changes in this legislation introduced by the Friendly Societies Act 1992 have meant that it is no longer possible to register under the 1974 Act<sup>4</sup>. New societies are now only allowed to register as incorporated societies under the 1992 Act<sup>5</sup>, although such registration is not compulsory. However, working men's clubs registered before 1 February 1993<sup>6</sup> under the Friendly Societies Act 1974 may remain registered under that Act<sup>7</sup>.

Every working men's club registered under the 1974 Act must:

- (1) appoint one or more trustees<sup>8</sup>;
- (2) appoint one or more qualified auditors to audit its accounts and balance sheet for each accounting year<sup>9</sup>, unless it qualifies as an exempt society<sup>10</sup>, in which case it may instead appoint two or more persons who are not qualified auditors<sup>11</sup>;
- (3) send annual returns of its affairs<sup>12</sup>, containing particulars of income, expenditure, assets and liabilities<sup>13</sup>, to the Financial Services Authority<sup>14</sup>; and
- (4) supply a copy thereof, together with a copy of the auditor's report, to any member gratuitously on application<sup>15</sup>.

A club so registered may by special resolution<sup>16</sup>, duly registered<sup>17</sup>, convert itself into a company<sup>18</sup>. There is no necessity for a working men's club to be so registered, and associations of working men, when unregistered, are in the same legal position as unincorporated members' or proprietary clubs<sup>19</sup>, as the case may be<sup>20</sup>.

A working men's club may also be registered under the Industrial and Provident Societies Act 1965<sup>21</sup>, and is then a body corporate distinct from its members<sup>22</sup>.

The Licensing Act 2003 makes particular provision with regard to clubs which are industrial and provident societies or friendly societies<sup>23</sup>.

1 See the Friendly Societies Act 1974 s 7(1)(d) (amended by the Friendly Societies Act 1992 Sch 16 para 4). The majority of working men's clubs are affiliated to the Working Men's Club and Institute Union, founded in 1862. At the date at which this volume states the law, further information about that union was accessible at [www.wmciu.org.uk](http://www.wmciu.org.uk).

2 See the Friendly Societies Act 1974 s 7 (as originally enacted).

3 See **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 2081 et seq.

4 See the Friendly Societies Act 1992 s 93; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 2149.

5 See the Friendly Societies Act 1992 s 5; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 2111.

6 Re the commencement of the Friendly Societies Act 1992 s 93: Friendly Societies Act 1992 (Commencement No 3 and Transitional Provisions) Order 1993, SI 1993/16.

7 See the Friendly Societies Act 1974 s 7(1) (as amended: see note 1). A friendly society registered under the Friendly Societies Act 1974 may convert itself into an incorporated society under the Friendly Societies Act 1992: see **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 2113.

8 See the Friendly Societies Act 1974 s 24 (substituted by the Friendly Societies Act 1992 Sch 16 para 9); PARA 247; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 2179.

9 See the Friendly and Industrial and Provident Societies Act 1968 s 4(1); the Friendly Societies Act 1974 s 31(1); and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 2206.

10 See the Friendly and Industrial and Provident Societies Act 1968 s 4(2), (4); the Friendly Societies Act 1974 s 32(1); and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 2206.

11 See the Friendly and Industrial and Provident Societies Act 1968 s 4(5); the Friendly Societies Act 1974 s 31(2)-(4); and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 2206.

12 See the Friendly and Industrial and Provident Societies Act 1968 s 11(1); the Friendly Societies Act 1974 s 43(1); and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 2211.

13 See the Friendly and Industrial and Provident Societies Act 1968 s 3; the Friendly Societies Act 1974 s 43(5); and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 2211.

14 As to the Financial Services Authority see **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 4 et seq.

15 See the Friendly Societies Act 1974 s 44; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 2213. Any member is entitled to inspect the books of the club at all reasonable hours: see s 62; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 2214. Machinery is provided for the settlement of disputes (see PARA 242) and for the dissolution of the club (see PARA 290).

16 As to special resolutions see the Friendly Societies Act 1974 s 86; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 2218.

17 See the Friendly Societies Act 1974 s 86(3); and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 2219.

18 See the Friendly Societies Act 1974 s 84; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARAS 2223-2225. As to the conversion of a registered society into an industrial and provident society see s 84A; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 2226.

19 As to unincorporated members' clubs see PARA 205; and as to unincorporated proprietary clubs see PARA 209.

20 Among the advantages of registration are:

- (1) exemption from stamp duty upon some documents that would otherwise carry such duty (see the Friendly Societies Act 1974 s 105; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 2383);
- (2) certain facilities for the investment of funds (see s 46; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 2187 et seq);
- (3) priority of claims against officers who die, become bankrupt or have execution issued against them (see s 59; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 2175 et seq); and
- (4) devolution of property on the death, resignation or removal of a trustee (see s 58; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 2186).

21 See the Industrial and Provident Societies Act 1965 s 1; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARAS 2402, 2413 et seq.

22 See the Industrial and Provident Societies Act 1965 s 3; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 2416. See also *Trebanog Working Men's Club and Institute Ltd v Macdonald* [1940] 1 KB 576, [1940] 1 All ER 454, DC.

23 See the Licensing Act 2003 s 65; and **LICENSING AND GAMBLING** vol 67 (2008) PARA 87.

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## 212. Miners' welfare institutes.

Both the Licensing Act 2003 and the Gambling Act 2005 make special provision with regard to miners' welfare institutes<sup>1</sup>. For the purposes of the Licensing Act 2003, a miners' welfare institute is defined as an association organised for the social well-being and recreation of persons employed in or about coal mines, or of such persons in particular<sup>2</sup>; and it is a 'relevant miners' welfare institute for the purposes of that Act if it satisfies certain statutory conditions<sup>3</sup>. For the purposes of the Gambling Act 2005, a miners' welfare institute is defined as an association which is established and conducted for social and recreational purposes and which satisfies either of the following conditions:

- (1) its affairs are managed by a group of individuals of whom at least two thirds are miners' representatives; or
- (2) it operates on premises the use of which is regulated in accordance with a charitable trust and the trust has received money from the Miners' Welfare Fund<sup>4</sup>, the former body corporate which was known as the Coal Industry Social Welfare Organisation<sup>5</sup> or the charitable trust known as the Coal Industry Social Welfare Organisation<sup>6</sup>.

- 1 See **LICENSING AND GAMBLING** vol 67 (2008) PARA 87; **LICENSING AND GAMBLING** vol 68 (2008) PARA 580 et seq.
- 2 Licensing Act 2003 s 66(3)(a).
- 3 See the Licensing Act 2003 s 66(3)(b), (4)-(6); and **LICENSING AND GAMBLING** vol 67 (2008) PARA 87.
- 4 See the Miners' Welfare Fund established by the Mining Industry Act 1920 s 20 (repealed). As to that fund, its winding up and the transfer of its property, rights and liabilities see **MINES, MINERALS AND QUARRIES** vol 31 (2003 Reissue) PARA 87.
- 5 See the body of that name incorporated under the Companies Act 1948 (repealed). As to that body and the transfer of its property, rights and liabilities see **MINES, MINERALS AND QUARRIES** vol 31 (2003 Reissue) PARA 87.
- 6 See the Gambling Act 2005 s 268(1), (2), (4); and **LICENSING AND GAMBLING** vol 68 (2008) PARA 580. As to the charitable trust known as the Coal Industry Social Welfare Organisation see **MINES, MINERALS AND QUARRIES** vol 31 (2003 Reissue) PARA 87.

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## **(v) Other Clubs and Institutions**

### **213. Clubs for the purpose of joint investment.**

A group of people may form themselves into an association, described as an investment club, for the purpose of making joint investments in stocks, shares and similar securities by means of the periodical contributions of each member of the group. Investments will be made at the discretion of a committee and members will be entitled to the income therefrom in proportion to their contributions. As the primary purpose of the association is the acquisition of gain, it cannot properly be regarded as a club within the terms of this title<sup>1</sup> and is more akin to a partnership<sup>2</sup>. Similarly, a group of people (typically in a workplace) who form themselves into an association, often described as a lottery syndicate, for the purpose of maximising their chances of winning a prize on the National Lottery<sup>3</sup> is not a club but a type of partnership.

- 1 See PARA 201.
- 2 As to partnerships see generally **PARTNERSHIP**.
- 3 As to the National Lottery see **LICENSING AND GAMBLING** vol 68 (2008) PARA 686 et seq.

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### **214. Mutual insurance clubs.**

The former monopoly created by the incorporation of the London Assurance Corporation and the Royal Exchange Assurance Corporation<sup>1</sup> gave rise to shipowners' mutual insurance associations or clubs for the insurance of their own vessels<sup>2</sup>. Mutual insurance associations may

be partnerships or may be incorporated under the companies legislation<sup>3</sup>. They are discussed in detail elsewhere in this work<sup>4</sup>.

- 1 See **INSURANCE** vol 25 (2003 Reissue) PARA 26.
- 2 See **INSURANCE** vol 25 (2003 Reissue) PARA 27.
- 3 See **INSURANCE** vol 25 (2003 Reissue) PARA 28.
- 4 See **INSURANCE** vol 25 (2003 Reissue) PARA 26 et seq.

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### **215. Learned societies and other institutions to which the Literary and Scientific Institutions Act 1854 applies.**

The Literary and Scientific Institutions Act 1854 applies to every institution, except the Royal Institution<sup>1</sup>, for the time being established for the promotion of science, literature, the fine arts, for adult instruction, the diffusion of useful knowledge, the foundation or maintenance of libraries or reading rooms for general use among the members or open to the public, of public museums and galleries of paintings and other works of art, collections of natural history, mechanical and philosophical inventions, instruments, or designs<sup>2</sup>. A person who, having been admitted in such an institution according to its rules and regulations, has paid a subscription, or has signed the roll or list of members, is a member of the institution<sup>3</sup>. The provisions of the 1854 Act are discussed in detail elsewhere in this work<sup>4</sup>.

- 1 Literary and Scientific Institutions Act 1854 s 33 proviso (amended by the Statute Law (Repeals) Act 1973).
- 2 Literary and Scientific Institutions Act 1854 s 33.
- 3 Literary and Scientific Institutions Act 1854 s 31.
- 4 See **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 939 et seq.

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## **(3) RULES AND BYELAWS**

### **(i) Rules**

#### **A. MEMBERS' AND PROPRIETARY CLUBS**

### **216. Matters usually provided for by rules.**

Every club is governed by rules, which generally specify the purposes for which it is instituted, and make provision as to the admission of members, the payment of entrance fees and subscriptions, the resignation and expulsion of members, the management of the affairs of the club, ordinary and extraordinary general meetings of the members, alteration of the rules and making of new rules, admission of guests, distribution of assets upon dissolution and such other matters as may be thought expedient, having regard to the nature and objects of the club<sup>1</sup>.

In determining, for the purposes of the Licensing Act 2003, whether a club is established in good faith as a club, the matters which are to be taken into account include any provision in the rules, or arrangements, under which money or property of the club, or any gain arising from the carrying on of the club, is or may be applied otherwise than for the benefit of the club as a whole or for charitable, benevolent or political purposes<sup>2</sup>.

1 For specimen rules see the Encyclopaedia of Forms and Precedents. In the case of a proprietary club, the rules are generally under the control of the proprietor.

2 See the Licensing Act 2003 s 63(1), (2)(b); and **LICENSING AND GAMBLING** vol 67 (2008) PARA 86.

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## **217. Methods of admission to membership.**

While election to membership is the most usual method of admission<sup>1</sup>, another method may be prescribed by the rules. This is contemplated by the Licensing Act 2003, which sets out, as two of the general conditions which a club must satisfy if it is to be a qualifying club<sup>2</sup> in relation to a qualifying club activity<sup>3</sup> for the purposes of that Act, that:

- (1) under the rules of the club, persons may not be admitted to membership or be admitted as candidates for membership to any of the privileges of membership, without an interval of at least two days between their nomination or application for membership and their admission<sup>4</sup>;
- (2) under the rules of the club, persons becoming members without prior nomination or application may not be admitted to the privileges of membership without an interval of at least two days between their becoming members and their admission<sup>5</sup>.

Similarly, the Gambling Act 2005 provides that:

- (a) with regard to exempt gaming<sup>6</sup> and subject to certain exceptions<sup>7</sup>, each person who participates must be either a member of the club or institute who applied for membership, was nominated for membership or became a member, at least 48 hours before he participates, or be the guest of such a member<sup>8</sup>;
- (b) each person who participates in gaming in reliance on a club gaming permit<sup>9</sup> must either be a member of the club or institute who applied for membership, was nominated for membership or became a member, at least 48 hours before he participates, or be the guest of such a member<sup>10</sup>.



Club membership may be incidental to some other purpose<sup>11</sup>.

- 1 See PARA 226.
- 2 As to the meaning of 'qualifying club' see **LICENSING AND GAMBLING** vol 67 (2008) PARA 86.
- 3 As to the meaning of 'qualifying club activity' see **LICENSING AND GAMBLING** vol 67 (2008) PARA 29.
- 4 Licensing Act 2003 s 62(2).
- 5 Licensing Act 2003 s 62(3). See further **LICENSING AND GAMBLING** vol 67 (2008) PARA 86.
- 6 As to exempt gaming see **LICENSING AND GAMBLING** vol 68 (2008) PARA 665.
- 7 For the exceptions see the Gambling Act 2005 s 269(6); and **LICENSING AND GAMBLING** vol 68 (2008) PARA 665.
- 8 Gambling Act 2005 s 269(6)(a), (b). See further **LICENSING AND GAMBLING** vol 68 (2008) PARA 665.
- 9 As to club gaming permits see **LICENSING AND GAMBLING** vol 68 (2008) PARA 581.
- 10 Gambling Act 2005 s 271(6). See further **LICENSING AND GAMBLING** vol 68 (2008) PARA 665.
- 11 Eg a guest registering at a hotel or holiday park who as a result becomes a member of a club.

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## **218. Interpretation of rules.**

The interpretation of the rules is a matter of law which the courts will examine<sup>1</sup>; consequently a rule which makes the committee or other body the sole interpreter of the rules, and their decision in all cases final, is contrary to public policy and void<sup>2</sup>. The rules of a club must be applied in accordance with the principles of natural justice<sup>3</sup> unless these principles have been expressly excluded from the rules, in which case the courts may consider whether such exclusion is in accordance with public policy<sup>4</sup>. Expulsion from membership must be within the powers conferred by the rules of the club<sup>5</sup>.

It has been judicially stated that in cases concerning members' clubs, the court usually has to take a broad sword to the problems, and eschew an unduly meticulous examination of the rules and resolutions. While these should not be ignored, there is usually a considerable degree of informality in the conduct of the affairs of such clubs, and the courts have to be ready to allow general concepts of reasonableness, fairness and common sense to be given more than their usual weight when confronted by claims to the contrary which appear to be based on any strict interpretation and rigid application of the letter of the rules<sup>6</sup>. The rules must, however, be scrupulously observed in appropriate cases such as a meeting which both brings about the dissolution of the club and changes the property rights of members on a dissolution<sup>7</sup>.

1 *Baker v Jones* [1954] 2 All ER 553, [1954] 1 WLR 1005. See also PARA 202 note 2. As to the principles of construction see **DEEDS AND OTHER INSTRUMENTS** vol 13 (2007 Reissue) PARA 164.

2 *Baker v Jones* [1954] 2 All ER 553, [1954] 1 WLR 1005.

3 See **JUDICIAL REVIEW** vol 61 (2010) PARA 629 et seq.

4 *John v Rees* [1970] Ch 345 at 400, [1969] 2 All ER 274 at 308. The application of this principle arises particularly in respect of the expulsion of a member: see PARA 238.

5 *Reel v Holder* [1981] 3 All ER 321, [1981] 1 WLR 1226, CA.

6 See *Re GKN Bolts and Nuts Ltd Sports and Social Club Leek v Donkersley* [1982] 2 All ER 855 at 857, [1982] 1 WLR 774 at 776 per Sir Robert Megarry V-C.

7 See *Re GKN Bolts and Nuts Ltd Sports and Social Club Leek v Donkersley* [1982] 2 All ER 855 at 863, [1982] 1 WLR 774 at 783 per Sir Robert Megarry V-C.

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## **219. Rules as part of contract.**

The rules form part of the contract between the members themselves in the case of a members' club, and both between the members themselves and also the members and the proprietor in the case of a proprietary club<sup>1</sup>.

It is usual for the secretary to send a copy of the rules to every new member on admission, but this is not necessary. If the rules are accessible to the members, they are deemed to have notice of them, and are bound by them<sup>2</sup>.

1 *Lyttelton v Blackburne* (1875) 45 LJCh 219; *Innes v Wylie* (1844) 1 Car & Kir 257; *Cassel v Inglis* [1916] 2 Ch 211. A rule of a proprietary club providing that the proprietor would not be responsible for the loss of or damage to any article brought into the club by members or guests was held to cover loss or damage by negligence: *Orchard v Connaught Club Ltd* (1930) 46 TLR 214. Cf *Williams v Curzon Syndicate Ltd* (1919) 35 TLR 475, CA. Rules do not set out obligations between individual members that might give rise to claims for damages if breached: *Anderton & Rowland (a firm) v Rowland* (1999) Times, 5 November. As to negligence generally see **NEGLIGENCE**; and as to damages generally see **DAMAGES**.

2 *Raggett v Musgrave* (1827) 2 C & P 556 (where the rules were contained in a book, kept at the club premises, and accessible to such of the members as chose to inspect them); and see also *John v Rees* [1970] Ch 345 at 388, [1969] 2 All ER 274 at 298. It is preferable to display a conspicuous notice informing members where the rules may be inspected.

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## **220. Alteration of rules of members' clubs.**

The rules of an unincorporated members' club can be altered or added to only in accordance with the express provisions of the rules themselves, except where the alteration or addition is made with the consent of every member<sup>1</sup>. Thus where the rules of such a club contain no express provision for their amendment or alteration, but have been altered from time to time<sup>2</sup> in general meeting, and the members have acquiesced in the alterations, a member who declines to pay an increased subscription which has been resolved upon in general meeting,

and who is posted in default, is entitled to an injunction restraining the committee from excluding him from the privileges of the club, although he has himself acquiesced in some of the previous alterations, and the reasonableness or otherwise of the alteration objected to is immaterial<sup>3</sup>.

Articles of association of an incorporated members' club may be altered in accordance with the general law<sup>4</sup>, and byelaws made thereunder will normally be made and be alterable by the directors in accordance with a power conferred by the articles of association.

Alterations in the name, affiliation and qualification for membership of an existing club do not of themselves result in its dissolution<sup>5</sup>.

Where a club holds a club premises certificate under the Licensing Act 2003<sup>6</sup>, or has made an application for a club premises certificate which has not been determined by the relevant licensing authority<sup>7</sup>, the secretary<sup>8</sup> of the club must give the relevant licensing authority notice of any change in the name, or alteration made to the rules, of the club<sup>9</sup>.

1 *Harington v Sendall* [1903] 1 Ch 921; *Dawkins v Antrobus* (1881) 17 ChD 615, CA; *Re Tobacco Trade Benevolent Association, Baron Sinclair v Finlay & Co Ltd* [1958] 3 All ER 353, [1958] 1 WLR 1113.

2 A patchwork of amendments over the years with the inevitable construction difficulties to which such a patchwork gives rise is undesirable: see the observations of Lightman J in *Royal Society for the Prevention of Cruelty to Animals v A-G* [2001] 3 All ER 530 at [42], [2002] 1 WLR 448 at [42].

3 *Harington v Sendall* [1903] 1 Ch 921. As to alterations of rules see also **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARAS 1879-1880.

4 See **COMPANIES** vol 14 (2009) PARAS 232 et seq.

5 *Abbatt v Treasury Solicitor* [1969] 3 All ER 1175, [1969] 1 WLR 1575, CA.

6 As to the meaning of 'club premises certificate' see **LICENSING AND GAMBLING** vol 67 (2008) PARA 85.

7 As to the meaning of 'relevant licensing authority' see **LICENSING AND GAMBLING** vol 67 (2008) PARA 85; and as to the licensing authorities see **LICENSING AND GAMBLING** vol 67 (2008) PARA 3.

8 For these purposes, 'secretary', in relation to a club, includes any person, whether or not an officer of the club, performing the duties of a secretary: Licensing Act 2003 s 70.

9 Licensing Act 2003 s 82(1). See further **LICENSING AND GAMBLING** vol 67 (2008) PARA 98. Failure to comply is an offence: see s 82(6).

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## 221. Authorisation of alterations.

Where the rules of a club provide generally that alterations may be made by a specified majority in general meeting, it is competent to the requisite majority to pass a resolution discontinuing some of the objects for which the club was originally formed<sup>1</sup>. Where power is given to alter the rules or make new rules and any alteration or addition is to be adopted by a general meeting, a new rule, duly adopted in general meeting, providing for the expulsion of members for conduct injurious to the interests of the club, is valid; but the new rule cannot, in the absence of an express power in that behalf, be made retrospective, so as to apply to matters which have already taken place<sup>2</sup>.

A general power to alter the rules is prima facie valid, and if it is exercised in good faith, existing members are bound by the rules as altered, provided that the alteration is not incompatible with the fundamental objects of the club<sup>3</sup>.

When it is desired to alter rules at a general meeting, special notice should be given to the members. Alteration of rules is not included in such a term as 'general business' or 'general purposes'<sup>4</sup>. Where there is an agreement to be bound by any alteration of the rules there is no implication that notice of the alteration must be given<sup>5</sup>.

1 *Thellusson v Viscount Valentia* [1907] 2 Ch 1, CA.

2 *Dawkins v Antrobus* (1881) 17 ChD 615, CA.

3 *Morgan v Driscoll* (1922) 38 TLR 251. See also *Watt v MacLaughlin* [1923] 1 IR 112; *Grimwood v Aldenham* (1928) 72 Sol Jo 569; *Hole v Garnsey* [1930] AC 472 at 495-496, 500, HL; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARAS 1879-1880.

4 *Harington v Sendall* [1903] 1 Ch 921 at 926 per Joyce J.

5 *Doyle v White City Stadium Ltd* [1935] 1 KB 110, CA.

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## **222. Alteration of rules of proprietary clubs.**

In the case of a proprietary club, the power to alter rules is usually retained in the hands of the proprietor and the rules provide accordingly. If such a club is incorporated, the law relating to incorporated members' clubs will apply<sup>1</sup>.

1 See PARA 220.

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## **B. REGISTERED WORKING MEN'S CLUBS**

### **223. Rules of registered working men's clubs.**

The rules of a working men's club registered under the Friendly Societies Act 1974<sup>1</sup> must specify the name and registered office of the club<sup>2</sup>, and the objects for which it is established<sup>3</sup>, and must provide for the following matters:

- (1) the purposes for which the funds are applicable, the terms of admission of members, the conditions under which any member may become entitled to any benefits, the forfeitures to be imposed on any member and the consequences of non-payment of any subscription or fine<sup>4</sup>;

- (2) the mode of holding meetings, the right of voting, and the manner of making, altering or rescinding rules<sup>5</sup>;
- (3) the appointment and removal of a committee of management, of a treasurer and other officers, and of trustees and, in the case of a club with branches, the composition and powers of the central body and conditions as to cessation of a branch<sup>6</sup>;
- (4) the investment of funds, the keeping of accounts and audit of the same at least once a year<sup>7</sup>;
- (5) annual returns to the Financial Services Authority relating to the affairs of the club<sup>8</sup>, and the number of members<sup>9</sup>;
- (6) inspection of the books by members<sup>10</sup>;
- (7) the manner in which disputes are to be settled<sup>11</sup>; and
- (8) in the case of dividing societies, provision for meeting all claims<sup>12</sup>.

Copies of the rules must be furnished to any person on demand, on payment of a reasonable fee<sup>13</sup>. No amendment or alteration of the rules is valid until registered<sup>14</sup>.

Similar provision must be made in the rules of a working men's club registered under the Industrial and Provident Societies Act 1965<sup>15</sup>.

1 As to registered working men's clubs see PARA 211.

2 See the Friendly Societies Act 1974 s 7(2), Sch 2 paras 1, 2; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 2156. The registered office of the club must be situated in the United Kingdom, the Channel Islands or the Isle of Man: s 7(2)(b) (amended by the Financial Services and Markets Act 2000 Sch 18 Pt I para 2); and see **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 2155. 'United Kingdom' means Great Britain and Northern Ireland: Interpretation Act 1978 s 5, Sch 1. Neither the Channel Islands nor the Isle of Man are within the United Kingdom. 'Great Britain' means England, Scotland and Wales: Union with Scotland Act 1706, preamble art I; Interpretation Act 1978 s 22(1), Sch 2 para 5(a). See further **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 3.

3 See the Friendly Societies Act 1974 Sch 2 para 3; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 2156.

4 See the Friendly Societies Act 1974 Sch 2 para 3; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 2156.

5 See the Friendly Societies Act 1974 Sch 2 para 4; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 2156.

6 See the Friendly Societies Act 1974 Sch 2 para 5; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 2156.

7 See the Friendly Societies Act 1974 Sch 2 para 6; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 2156.

8 See the Friendly Societies Act 1974 s 43; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 2211. As to the Financial Services Authority see **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 4 et seq.

9 See the Friendly Societies Act 1974 Sch 2 para 7; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 2156.

10 See the Friendly Societies Act 1974 Sch 2 para 8; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 2156.

11 See the Friendly Societies Act 1974 Sch 2 para 9; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 2156.

12 See the Friendly Societies Act 1974 Sch 2 para 10; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 2156.

13 See the Friendly Societies Act 1974 s 21; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 2156.

14 See the Friendly Societies Act 1974 s 18; PARA 224; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARAS 2162-2163.

15 See the Industrial and Provident Societies Act 1965 Sch 1; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 2425.

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## **224. Alteration of rules of working men's club.**

No amendment in the rules of a working men's club registered under the Friendly Societies Act 1974<sup>1</sup> is valid until it has been registered by the Financial Services Authority<sup>2</sup>, for which purpose copies of the amendment, signed by three members and the secretary, must be sent to the Authority<sup>3</sup>, which, on being satisfied that the amendment is not contrary to law, will issue an acknowledgment of registration, which is conclusive evidence of due registration<sup>4</sup>.

Similar provisions apply with regard to the amendment of rules of a working men's club registered under the Industrial and Provident Societies Act 1965<sup>5</sup>.

1 As to registered working men's clubs see PARA 211.

2 The Financial Services Authority is not required to register any amendment of a club's rules unless such consequential amendments (which relate mainly to accounts and audits) of the club's rules as are required by the Friendly and Industrial and Provident Societies Act 1968 either have been made before the application for registration of that amendment or are to be effected by that amendment: see s 12(3) (amended by the Friendly Societies Act 1974 Sch 11; and by SI 2001/2617). As to the Financial Services Authority see **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 4 et seq.

3 See the Friendly Societies Act 1974 s 18; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 2162.

4 See the Friendly Societies Act 1974 s 19; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 2163.

5 See the Industrial and Provident Societies Act 1965 s 10; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARAS 2436-2437.

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## **(ii) Byelaws**

### **225. Byelaws.**

The rules of a club frequently provide that subsidiary matters may be controlled by regulation or byelaw<sup>1</sup>. The rules (or, in the case of an incorporated club, the articles of association) should prescribe how such regulations or byelaws are to be made and how they may be altered. The

nature and extent of the matters that may be so controlled should be specified in the rules (or articles). Where the rules of a club provide that all the concerns of the club and all arrangements for its management are to be conducted by a committee consisting of not less than a specified number of members, and that the committee is to possess all needful powers for the government of the club and for the election of new members and of additional committee members, and is to have power from time to time to publish such byelaws as it deems expedient, the committee has power to pass a byelaw providing that retired members may be readmitted on payment of subscriptions in arrear, not only without payment of an entrance fee, but without any of the other formalities required for the election of new members<sup>2</sup>.

1 As to the power of the governing body of a learned society or other institution to which the Literary and Scientific Institutions Act 1854 applies to make byelaws see s 24; and **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 941; and as to such societies see PARA 215.

2 *Lambert v Addison* (1882) 46 LT 20; and see *Merrifield Ziegler & Co v Liverpool Cotton Association Ltd* (1911) 105 LT 97.

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## **(4) MEMBERSHIP**

### **(i) Admission, Entrance Fees and Subscriptions**

#### **226. Election and admission.**

The rules generally provide that candidates for membership<sup>1</sup> are to be proposed and seconded by members, and are to be elected by ballot, either of the whole society, or of the committee of management; and that the secretary, on a candidate being duly elected, is to notify him of the fact, at the same time furnishing him with a copy of the rules, and asking him to pay the entrance fee and subscription for the current year. If, as is usually the case, the rules provide that an elected candidate is not entitled to the privileges of membership until he has paid the entrance fee and first year's subscription, the candidate, on receiving notice of his election with a copy of the rules, has a right either to accept or reject the membership so offered, the contract not being complete until he fulfils the condition by payment of the sums mentioned<sup>2</sup>. Exceptionally, the rules may provide for admission without formal election<sup>3</sup>.

There may be more than one category of membership provided for by the rules; thus there may be full (or ordinary) members, junior members, associate members<sup>4</sup>, country members, 'off-peak' members (particularly for sports clubs), life members and honorary members. The latter do not pay any entrance fee or subscription.

1 As to the effect that certain discrimination legislation may have on the election of members see PARA 227.

2 *Re New University Club (Duty on Estate)* (1887) 18 QBD 720 at 727.

3 See PARA 217.

4 For the purposes of the Licensing Act 2003, a person is an 'associate member' of a club if (1) in accordance with the rules of the club, he is admitted to its premises as being a member of another club; and (2)

that other club is a recognised club (see s 193; and **LICENSING AND GAMBLING** vol 67 (2008) PARA 32): s 67(2). For the purposes of the Disability Discrimination Act 1995 s 21F (see PARA 227; and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 596) a person is an associate of an association to which s 21F applies if, not being a member of it, he has under its constitution some or all of the rights enjoyed by members (or would have apart from any provision in its constitution authorising the refusal of those rights in particular cases): s 21J(1)(b) (added by the Disability Discrimination Act 2005 s 12).

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## **227. Discrimination by private members' clubs in relation to admission.**

In relation to an association with at least 25 members admission to membership of which is regulated by the association's constitution and is so conducted that members do not constitute a section of the public<sup>1</sup>, it is unlawful to discriminate on racial grounds against a person who is not a member in the terms on which the association is prepared to admit him to membership or by refusing or deliberately omitting to accept his application for membership<sup>2</sup>. An exception to this is where the main object of the association is to enable the benefits of membership to be enjoyed by persons of a particular racial group defined otherwise than by reference to colour<sup>3</sup>.

In relation to any association of persons (however described, whether corporate or unincorporate, and whether or not its activities are carried on for profit) which has 25 or more members, admission to membership of which is regulated by its constitution and is so conducted that the members do not constitute a section of the public<sup>4</sup> and which is not a trade organisation<sup>5</sup>, it is unlawful to discriminate against a disabled person<sup>6</sup> who is not a member in the terms on which the association is prepared to admit him to membership, or by refusing or deliberately omitting to accept his application for membership<sup>7</sup>. It is also unlawful for the association to discriminate against a disabled person who is a member, or associate, of the association:

- (1) in the way it affords him access to a benefit, facility or service;
- (2) by refusing or deliberately omitting to afford him access to a benefit, facility or service;
- (3) in the case of a member, by depriving him of membership, or by varying the terms on which he is a member;
- (4) in the case of an associate, by depriving him of his rights as an associate, or by varying those rights; or
- (5) in either case, by subjecting him to any other detriment<sup>8</sup>.

With regard to sex discrimination, the Sex Discrimination Act 1976 permits a body the activities of which are carried on otherwise than for profit, and which was not set up by any enactment, to restrict membership to persons of one sex (disregarding any minor exceptions), and to restrict the provision of benefits, facilities or services to members of any such body where the membership is so restricted, even though membership of the body is open to the public, or to a section of the public<sup>9</sup>. The main object of a voluntary body may also be to confer benefits on persons of one sex only (disregarding any benefits to persons of the opposite sex which are exceptional or are relatively insignificant)<sup>10</sup>. Any such discriminatory treatment must, however, either be a proportionate means of achieving a legitimate aim, or be for the purpose of preventing or compensating for a disadvantage linked to sex<sup>11</sup>.

With regard to discrimination on the grounds of sexual orientation, it is unlawful for any association of persons<sup>12</sup> which has 25 or more members, which is not a trade organisation<sup>13</sup> and



admission to membership of which is regulated by its constitution and is so conducted that the members do not constitute a section of the public<sup>14</sup> to discriminate<sup>15</sup> against a person who is not a member of the association in the terms on which it is prepared to admit him to membership, or by refusing or deliberately omitting to accept his application for membership<sup>16</sup>. It is also unlawful for such an association to discriminate against a person who is a member, or associate, of the association<sup>17</sup>:

- (a) in the way it affords him access to any benefits, facilities or services, or by refusing or deliberately omitting to afford him access to them; or
- (b) in the case of a member, by depriving him of membership, or varying the terms on which he is a member; or
- (c) in the case of an associate, by depriving him of his rights as an associate, or varying those rights; or
- (d) in either case, by subjecting him to any other detriment<sup>18</sup>.

These provisions do not, however, apply to any association if the main object of the association is to enable the benefits of membership, whatever they may be, to be enjoyed by persons of a particular sexual orientation<sup>19</sup>.

At the date at which this volume states the law, there are no parallel provisions with regard to discrimination on the grounds of age<sup>20</sup> or on the grounds of religion or belief<sup>21</sup>.

1 See the Race Relations Act 1976 s 25(1); and **DISCRIMINATION** vol 13 (Reissue) PARA 424. See also *Charter v Race Relations Board* [1973] AC 868, [1973] 1 All ER 512, HL; and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 465.

2 See the Race Relations Act 1976 s 25(2); and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 466.

3 See the Race Relations Act 1976 s 26; and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 467.

4 In the meaning of the Disability Discrimination Act 1995 s 19(2): see **DISCRIMINATION** vol 13 (2007 Reissue) PARAS 583-584.

5 In it is not an organisation to which the Disability Discrimination Act 1995 s 13 (see **DISCRIMINATION** vol 13 (2007 Reissue) PARA 541) applies.

6 As to the meaning of 'disabled person' see **DISCRIMINATION** vol 13 (2007 Reissue) PARA 511; and as to the meaning of 'discrimination' for these purposes see the Disability Discrimination Act 1995 s 21G; and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 597.

7 See the Disability Discrimination Act 1995 s 21F(1), (2) (s 21F added by the Disability Discrimination Act 2005 s 12); and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 596. Where an association has a practice, policy or procedure which makes it impossible or unreasonably difficult for disabled persons, in comparison with persons who are not disabled, to be admitted as members of the association, it is the duty of the association to take such steps as it is reasonable in all the circumstances to take in order to change that practice, policy or procedure so that it no longer has that effect: Disability Discrimination (Private Clubs etc) Regulations 2005, SI 2005/3258, reg 8(1). Where an auxiliary aid or service would enable disabled persons to be admitted as members of the association, or facilitate disabled persons being admitted as members, it is the duty of the association to take such steps as it is reasonable in all the circumstances to take in order to provide that auxiliary aid or service: reg 8(2). It is unlawful for an association to discriminate against a disabled person by failing to comply with a duty so imposed on it in circumstances in which the effect of that failure is to make it impossible or unreasonably difficult for the disabled person, in comparison with persons who are not disabled, to be admitted as a member of the association: reg 8(3). Failure to comply with such a duty is justified only if in the opinion of the association, one or both of the conditions mentioned in reg 13(2) (see PARA 264 note 7) is or are satisfied, and it is reasonable, in all the circumstances, for it to hold that opinion: reg 13(1). As to justification see further the Disability Discrimination Act 1995 s 21G; and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 597. See also the Disability Discrimination (Private Clubs etc) Regulations 2005, SI 2005/3258, regs 3-5 (reg 3 amended by SI 2007/1898). The duties set out above and in note 8 do not, however, require an association to take any steps which would fundamentally alter the nature of the benefits, facilities or services in question or the nature of the association, or a member or associate of an association which meets in that member's or associate's private house to make any adjustments to a physical feature in relation to that

member's or associate's private house: Disability Discrimination (Private Clubs etc) Regulations 2005, SI 2005/3258, reg 14.

8 See the Disability Discrimination Act 1995 s 21F(1), (3) (as added: see note 7); and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 596. Where an association has a practice, policy or procedure which makes or would make it impossible or unreasonably difficult for disabled persons who are members or associates, in comparison with members or associates who are not disabled, to retain their membership or rights as an associate, or to avoid having their membership or rights as an associate varied, it is the duty of the association to take such steps as it is reasonable in all the circumstances to take in order to change that practice, policy or procedure so that it no longer has that effect: Disability Discrimination (Private Clubs etc) Regulations 2005, SI 2005/3258, reg 7(1). Where an auxiliary aid or service would: (1) enable disabled persons who are members or associates to retain their membership or rights as an associate, or to avoid having their membership or rights as an associate varied; or (2) facilitate the retention by disabled persons who are members or associates of their membership or rights as an associate, or facilitate such disabled persons avoiding having their membership or rights as an associate varied, it is the duty of the association to take such steps as it is reasonable in all the circumstances to take in order to provide that auxiliary aid or service: reg 7(2). It is unlawful for an association to discriminate against a disabled person who is a member or associate by failing to comply with a duty so imposed on it in circumstances in which the effect of that failure is to make it impossible or unreasonably difficult for the disabled person who is a member or associate, in comparison with members or associates who are not disabled, to retain their membership or rights as an associate, or to avoid having their membership or rights as an associate varied: reg 7(3). See also regs 13, 14, cited in note 7.

9 See the Sex Discrimination Act 1975 s 34(1), (2); and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 383.

10 See the Sex Discrimination Act 1975 s 34(3), (4); and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 383.

11 See the Sex Discrimination Act 1975 s 34(5) (added by SI 2008/963); and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 383.

12 I.e. an association however described, whether corporate or unincorporated, and whether or not its activities are carried on for profit: see the Equality Act (Sexual Orientation) Regulations 2007, SI 2007/1263, reg 16(1).

13 For these purposes, 'trade organisation' means an organisation of workers, an organisation of employers, or any other organisation whose members carry on a particular profession or trade for the purposes of which the organisation exists; 'profession' includes any vocation or occupation; and 'trade' includes any business: Equality Act (Sexual Orientation) Regulations 2007, SI 2007/1263, reg 16(2).

14 I.e. within the meaning of the Equality Act (Sexual Orientation) Regulations 2007, SI 2007/1263, reg 4(1): see **DISCRIMINATION** vol 13 (2007 Reissue) PARA 753.

15 As to the meaning of 'discriminate' for these purposes see **DISCRIMINATION** vol 13 (2007 Reissue) PARA 753.

16 Equality Act (Sexual Orientation) Regulations 2007, SI 2007/1263, reg 16(1), (3).

17 For these purposes, a person is a member of an association if he belongs to it by virtue of his admission to any sort of membership provided for by its constitution (and is not merely a person with certain rights under its constitution by virtue of his membership of some other association), and references to membership of an association are to be construed accordingly; and a person is an associate of an association to which the Equality Act (Sexual Orientation) Regulations 2007, SI 2007/1263, reg 16 applies if, not being a member of it, he has under its constitution some or all of the rights enjoyed by members (or would have apart from any provision in its constitution authorising the refusal of those rights in particular cases): reg 16(5).

18 Equality Act (Sexual Orientation) Regulations 2007, SI 2007/1263, reg 16(4).

19 Equality Act (Sexual Orientation) Regulations 2007, SI 2007/1263, reg 17(1). In determining whether that is the main object of an association regard must be had to the essential character of the association and to all relevant circumstances including, in particular, the extent to which the affairs of the association are so conducted that the persons primarily enjoying the benefits of membership are of the sexual orientation in question: reg 17(2).

20 As to age discrimination see **DISCRIMINATION** vol 13 (2007 Reissue) PARA 754 et seq.

21 As to discrimination on the grounds of religion or belief see **DISCRIMINATION** vol 13 (2007 Reissue) PARA 660 et seq. See also *Royal Society for the Prevention of Cruelty to Animals v A-G* [2001] 3 All ER 530, [2002] 1 WLR 448, in which Lightman J held that the Society would be entitled to exclude from membership persons who supported hunting with dogs, provided that each application was considered individually.

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## **228. Liability for entrance fees and subscriptions.**

A claim will not lie, as a general rule, to compel payment of the entrance fee or initial subscription to a club, because the contract to become a member is generally not complete until those sums have been paid<sup>1</sup>. When, however, all the conditions imposed by the rules have been complied with and the candidate has become a member, he may be sued for all sums payable by him as a member, in accordance with the rules<sup>2</sup>. In the case of a proprietary club he may be sued by the proprietor, in the case of an incorporated club by the company<sup>3</sup>, and in the case of an unincorporated members' club by the members jointly<sup>4</sup>, but for convenience of recovery, the rules may provide that subscriptions are to be deemed to be a debt to the treasurer of the club for the time being. The liability of a member for subscriptions *prima facie* continues until he has duly ceased to be a member, in accordance with the rules, either by resignation or expulsion<sup>5</sup>, after which he is liable only for subscriptions accrued due while he was a member. No claim will lie, however, for the recovery of subscriptions payable by members of registered working men's clubs<sup>6</sup>.

1 See PARA 226.

2 As to proceedings against a member of a learned society or other institution to which the Literary and Scientific Institutions Act 185 applies see s 25; and **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 943; and as to such societies see PARA 215.

3 *Raggett v Bishop* (1826) 2 C & P 343; *Re New University Club (Duty on Estate)* (1887) 18 QBD 720 at 727 per Hawkins J.

4 *Labouchere v Earl of Wharncliffe* (1879) 13 ChD 346 at 354. As to the power to sue in the case of unincorporated clubs see further PARAS 271, 279.

5 *Raggett v Bishop* (1826) 2 C & P 343; *Labouchere v Earl of Wharncliffe* (1879) 13 ChD 346. Where the rules provided for the payment of entrance fees by yearly instalments, members, in the event of ceasing to belong to the club, being liable to pay any balance due in one sum, and a member died after having paid one instalment, it was held that his executors were not liable for the balance, the rule not being intended to apply in case of death: *Denison v Wynn* (1909) 26 TLR 64. As to resignation see PARAS 233-235; and as to expulsion see PARA 236 et seq.

6 See the Friendly Societies Act 1974 s 61; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 2167. As to registered working men's clubs see PARA 211.

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## **229. When subscriptions are in arrear.**

Where the rules provide that subscriptions are due on the first day of a specified month and payable at any time during that month, a member is not in arrear with his subscription until the

end of the month; he is therefore entitled to vote and exercise all the other rights of membership during the month, even if it is provided by the rules that no member is qualified to vote until his subscription for the current year has been paid<sup>1</sup>.

1 *Innes v Wylie* (1844) 1 Car & Kir 257 at 262. In the case of a learned society or other institution to which the Literary and Scientific Institutions Act 1854 applies, no person is entitled to vote or be counted as a member whose current subscription is in arrear: see s 31; and **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 942. As to such societies see para 215.

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## **(ii) Mutual Rights and Liabilities of Members**

### **230. Mutual rights and duties of members and of proprietors and members.**

In the case of a members' club, the rights and duties of the members as between themselves, and the internal arrangements for carrying it on, depend upon the rules. Members are entitled to enjoy the use of the club premises, if any, and other privileges of the society, in accordance with the rules, so long as they duly pay their subscriptions and continue to be members, and a member can seek an injunction to prohibit his wrongful exclusion<sup>1</sup>. The rules sometimes provide that membership is to cease on failure to pay the subscription or following conviction on indictment or in the event of insolvency<sup>2</sup>. The rules of a members' club normally provide that charges for goods or facilities provided are to be paid as they are supplied or enjoyed and a claim in contract may be founded thereon in the event of default. If members of a proprietary club are wrongfully excluded from the privileges for which they have paid, their chief remedy is a claim against the proprietor for damages for breach of contract<sup>3</sup>. Members may be sued by the proprietor for articles consumed, as for goods sold and delivered<sup>4</sup>.

1 See PARA 241. As to injunctions generally see **CIVIL PROCEDURE** vol 11 (2009) PARA 331 et seq.

2 As to insolvency generally see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY**.

3 See PARA 241. See generally **CONTRACT; DAMAGES**.

4 See *National Sporting Club Ltd v Cope* (1900) 82 LT 352, DC; *Bowyer v Percy Supper Club Ltd* [1893] 2 QB 154, DC.

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### **231. Liabilities of members.**

Clubs are societies the members of which are continually changing, and no member, as such, becomes liable, in the absence of a rule imposing such liability<sup>1</sup>, to pay to the funds of the society, or to the trustees, or to anyone else, any sums beyond the subscriptions which the

rules require him to pay so long as he remains a member. It is upon this fundamental condition, not usually expressed but generally understood, that clubs are formed<sup>2</sup>.

The liability of club members in respect of claims by third parties is considered elsewhere in this title<sup>3</sup> but no member of an incorporated club is liable in respect of the debts and liabilities of the company except in the event of a winding up, and then the liability is limited to the amount unpaid on his shares or the amount of his guarantee, as the case may be<sup>4</sup>. The mutual relations between the members of an incorporated members' club are, generally speaking, similar to those which exist in the case of an unincorporated members' club.

In the case of unincorporated members' clubs, a distinction may be drawn between actions by members and those by strangers. Membership of a committee of a club (and all the more so, membership only of the club) does not carry with it any special duty of care towards other members of the club<sup>5</sup>; nor indeed does it appear that, as regards liability to a stranger, there is any distinction between a member of a committee and an ordinary member of the club, though the members of a committee (that is, members at the time when the cause of action arose) will be liable personally, to the exclusion of the other members, if they act personally, as by employing an incompetent person to do repair work as a result of which a stranger is injured<sup>6</sup>. In principle, the liability of the members of such clubs towards a stranger seems to depend on whether the actual wrongdoer stands in the relation to them of an agent or servant, and if so, whether at the time of the wrongful act or omission he is acting on their behalf and within the scope of his express or implied authority<sup>7</sup>. One question of fact to be determined, therefore, is who are the principals of the agent; in some cases the principals may be the committee of management, not the members themselves<sup>8</sup>.

The liability in tort of members between themselves, for instance for defamation, will be determined in accordance with the general law<sup>9</sup>.

1 For an instance of such a rule see *Hall v Sim* (1894) 10 TLR 463 (where the defendants, the committee, were held entitled to bring in the members of the club as third parties for the purpose of obtaining indemnity).

2 *Wise v Perpetual Trustee Co* [1903] AC 139, PC.

3 See PARA 266 et seq.

4 See the Insolvency Act 1986 s 74; and **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(4) (2004 Reissue) PARA 704 et seq.

5 *Prole v Allen* [1950] 1 All ER 476. Nor, however, does such membership exclude ordinary liability in tort once a duty of care has been established: *Owen v Northampton Borough Council* (1992) 156 LG Rev 23, CA. Furthermore, where a member is appointed steward, he becomes the agent of each member to carry out his duties without negligence and will be liable if he is negligent in discharging them: *Prole v Allen* [1950] 1 All ER 476. Trustees or members holding club property may, in their capacity as owners, incur liability, in accordance with ordinary principles by reason of the state of the property, particularly where it is in their occupation: *Robertson v Ridley* [1989] 2 All ER 474, [1989] 1 WLR 872, CA, considered in *McKinley v Montgomery* [1993] NI 93, NI CA. The chairman and secretary are not generally liable to a member for injuries sustained when using club premises unless the rules specifically so provide; a chairman, other officer or member who acquires knowledge both of a specific danger and of the risk of injury if a warning is not given may be in breach of a duty of care to a member who is injured: see *Jones v Northampton Borough Council* (1990) Times, 12 May, CA.

6 *Brown v Lewis* (1896) 12 TLR 455.

7 As to a club's liability in contract to third parties see PARA 266 et seq. In *Campbell v Thompson* [1953] 1 QB 445, [1953] 1 All ER 831, the action was constituted against the members (at the time of the contract) and entertained by Pilcher J on the basis that, if negligence were proved (which it was not), they would be liable. As to the liability of an employer for the acts of his employee see **TORT** vol 97 (2010) PARA 680 et seq. As to agency generally see **AGENCY**.

8 See *Bradley Egg Farm Ltd v Clifford* [1943] 2 All ER 378, CA (negligence of employee; executive council liable).

9 See eg *Chamberlain v Boyd* (1883) 11 QBD 407, CA. See generally **LIBEL AND SLANDER**.

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### **232. Settlement of disputes.**

In the case of a members' club, the rules may provide a mechanism for the settlement of internal disputes, for example by arbitration or mediation<sup>1</sup>. In the case of a working men's club registered under the Friendly Societies Act 1974 or the Friendly Societies Act 1992<sup>2</sup>, the rules must make such provision<sup>3</sup>. In the case of such a club which is registered under the Industrial and Provident Societies Act 1965<sup>4</sup>, the rules may, but need not, give directions as to the manner in which disputes are to be decided; if they contain such directions, then that procedure must be adopted but if they do not, or where no decision is made on a dispute within 40 days after application for a reference under the rules, a party to an internal dispute may apply either to the county court or to a magistrates' court which may hear and determine the matter in dispute<sup>5</sup>.

1 As to arbitration and mediation see generally **ARBITRATION** vol 2 (2008) PARA 1201 et seq.

2 As to working men's clubs see PARA 211.

3 See the Friendly Societies Act 1974 Sch 2 para 9; the Friendly Societies Act 1992 ss 80, 81; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARAS 2156, 2349, 2350.

4 As to such registration see PARA 211 text and notes 21-22.

5 See the Industrial and Provident Societies Act 1965 s 60; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 2534 et seq.

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### **(iii) Resignation and Expulsion**

#### **A. RESIGNATION**

### **233. Resignation from an unincorporated members' club.**

Subject to any provision in the rules to the contrary, a member of an unincorporated members' club may at any time terminate his membership on advising the secretary of his intention to resign<sup>1</sup>; he may also by his conduct be deemed to have resigned, as for example when he fails to pay his subscriptions, notwithstanding a provision in the rules requiring the club to give formal notice of exclusion to a member defaulting in his subscriptions<sup>2</sup>. The resignation does not require any acceptance by the committee, and cannot, in the absence of a byelaw to the contrary<sup>3</sup>, be withdrawn or revoked<sup>4</sup>. A member who sends a letter of resignation thereupon ceases to be a member, and can only be reinstated by re-election<sup>5</sup>.

- 1 *Finch v Oake* [1896] 1 Ch 409, CA.
- 2 *Re Sick and Funeral Society of St John's Sunday School, Golcar* [1973] Ch 51, [1972] 2 All ER 439.
- 3 *Lambert v Addison* (1882) 46 LT 20; and see PARA 225.
- 4 *Finch v Oake* [1896] 1 Ch 409, CA.
- 5 *Finch v Oake* [1896] 1 Ch 409, CA; but see PARA 225.

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### **234. Resignation from other clubs.**

The right of a member of a proprietary club to resign, or discontinue payment of his subscription, depends upon the terms of the contract between him and the proprietor<sup>1</sup>; and the right of a member of a club incorporated under the companies legislation<sup>2</sup> to do so depends upon the rules of the club and the regulations governing the company.

- 1 It is likely to be governed by the club rules or constitution.
- 2 Ie (with effect from 1 October 2009) the Companies Act 2006, or the Companies Act 1985 or an earlier Companies Act, according to the date of incorporation. See generally **COMPANIES**.

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### **235. Liability of resigning member.**

The resignation of a member does not affect his liability in respect of any contracts entered into prior to the resignation<sup>1</sup>, but it protects him against liability in regard to subsequent transactions, unless he has continued to hold himself out as a member<sup>2</sup>.

- 1 *Parr v Bradbury* (1885) 1 TLR 525 (a member who had resigned held liable in respect of bonds properly given by the management committee during his membership). As to the liability of members to third persons generally see PARA 266.
- 2 It is suggested that the resigning member obtains written confirmation from the club, failing which he may need to advertise his resignation so as to avoid the risk of liability, taking care not to expose himself to any pre-resigning liability for which he might not otherwise be responsible.

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## **B. EXPULSION**

### **236. Expulsion of members.**

There is no inherent power to expel a club member<sup>1</sup> but a member may be expelled if the rules so provide<sup>2</sup>. Where there is no rule providing for expulsion but there is provision to amend the rules, a new rule which provides for the expulsion of any member whose conduct is injurious to the club will be valid provided it does not operate retrospectively<sup>3</sup>.

1 *Dawkins v Antrobus* (1881) 17 ChD 615 at 620, CA, per Jessel MR.

2 As to expulsion from working men's clubs see PARA 242.

3 *Dawkins v Antrobus* (1881) 17 ChD 615, CA. As to the alteration of club rules see PARAS 220-221.

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### **237. Strict observance of rules as to expulsion.**

A power of expulsion must be exercised in strict conformity with the rules by which it is given, otherwise the purported expulsion will be inoperative<sup>1</sup>.

If the rules provide that a meeting of the committee must be specially summoned to consider the conduct of any member whom it is proposed to expel, it is not sufficient for the committee to take such a matter into consideration at any ordinary meeting<sup>2</sup>. Where it is provided that a certain number of days' notice of the meeting to consider the question must be given, the expulsion will be void if the notice is given a day too late<sup>3</sup>. The notice should not merely be posted up in the coffee-room or library, but should be given by circular, at all events to such of the members as do not habitually or daily use the club<sup>4</sup>. If the rules require that the resolution must be passed by a specified majority of the members present at the meeting, not only those who vote, but all who are present at the meeting, must be counted in ascertaining whether it is carried by the requisite majority, and the question must be put in proper form<sup>5</sup>. Under a rule which provides that a member may be expelled if in the opinion of the committee, after inquiry, his conduct is injurious to the welfare and interests of the club, the committee must make a fair inquiry into the truth of the alleged facts, after giving notice to the member concerned that his conduct is about to be inquired into, and giving him an opportunity to state his case to the committee<sup>6</sup>.

If the committee has power to expel a member of the club, notice of the calling of a meeting to exercise the power must be given to each member of the committee. The omission to summon a member of the committee who does not attend the meeting will render the proceedings invalid<sup>7</sup>, unless the absent member would be physically incapable of answering the summons<sup>8</sup>. Omission to send notice is not excused by reason of the fact that a member of the committee has intimated that he cannot attend the meeting<sup>9</sup>. The notice should state the object of the meeting with sufficient particularity<sup>10</sup>.



- 1 *Innes v Wylie* (1844) 1 Car & Kir 257; *Murphy v Synott* [1925] NI 14.
- 2 *Fisher v Keane* (1878) 11 ChD 353.
- 3 *Labouchere v Earl of Wharncliffe* (1879) 13 ChD 346. In *James v Chartered Accountants Institute* (1907) 98 LT 225, CA, it was held that a notice posted to the registered address of a member proposed to be expelled was sufficient, although, having changed his address, he never actually received it, and it had been returned through the Dead Letter Office, the member having neglected to notify his change of address.
- 4 *Labouchere v Earl of Wharncliffe* (1879) 13 ChD 346 at 353.
- 5 *Labouchere v Earl of Wharncliffe* (1879) 13 ChD 346 at 355.
- 6 *Labouchere v Earl of Wharncliffe* (1879) 13 ChD 346 at 350.
- 7 *Young v Ladies' Imperial Club Ltd* [1920] 2 KB 523, CA. The question whether a meeting is invalidated if a member of the committee fails to receive a summons which is dispatched to him was left open in *Leary v National Union of Vehicle Builders* [1971] Ch 34 at 54, [1970] 2 All ER 713 at 724 per Megarry J.
- 8 *Young v Ladies' Imperial Club Ltd* [1920] 2 KB 523 at 528, CA.
- 9 *Young v Ladies' Imperial Club Ltd* [1920] 2 KB 523 at 534, CA.
- 10 *Young v Ladies' Imperial Club Ltd* [1920] 2 KB 523 at 530-531, CA.

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### 238. Prerequisites of decision to expel.

It is necessary that a power of expulsion should be exercised in good faith for the benefit of the club, and not from any indirect or improper motive<sup>1</sup>.

The principles of natural justice<sup>2</sup> and the right to a fair trial<sup>3</sup> must also be observed in exercising a power of expulsion, unless it plainly appears, on the true construction of the rules, that the power was intended to be absolute<sup>4</sup>. If the rules refer the consideration of questions concerning the conduct of members to the committee, the committee is in a quasi-judicial position<sup>5</sup>, and must give reasonable notice to any member whose conduct is impugned, and also a reasonable opportunity of defending himself and meeting the accusations brought against him<sup>6</sup>; and it should not act on ex parte evidence<sup>7</sup>.

1 *Tantussi v Molli* (1886) 2 TLR 731 (where, an action having been brought for a declaration that a purported expulsion of the plaintiff was void, and an offer having been made to readmit him if he would discontinue the action and pay the costs, a fresh resolution expelling the plaintiff, which had been passed in due form in order to put a stop to the proceedings, was held to be void).

2 See **JUDICIAL REVIEW** vol 61 (2010) PARA 629 et seq. See also note 4.

3 Ie under the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 6, now incorporated into English law by the Human Rights Act 1998 Sch 1 Pt I art 6: see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. See eg *R (on the application of Sunspell Ltd) v Association of British Travel Agents* [2000] All ER (D) 1368, which concerned the exclusion of a travel agent from its trade association. For a case concerning apparent bias see *Flaherty v National Greyhound Racing Club Ltd* [2004] EWHC 2838 (Ch), [2004] All ER (D) 113 (Dec), revsd [2005] EWCA Civ 1117, (2005) Times, 5 October, [2005] All ER (D) 70 (Sep).

4 *Wood v Woad* (1874) LR 9 Exch 190 at 196; *Russell v Russell* (1880) 14 ChD 471 at 478. For this purpose there is no distinction between expulsion and suspension: *John v Rees* [1970] Ch 345 at 397, [1969] 2 All ER 274 at 305 per Megarry J. Such a power is considered of a quasi-judicial character unless the contrary intention clearly appears: cf *Burn v National Amalgamated Labourers' Union of Great Britain and Ireland* [1920] 2 Ch 364 (expulsion from trade union); *Lee v Showmen's Guild of Great Britain* [1952] 2 QB 329, [1952] 1 All ER 1175, CA; *Leary v National Union of Vehicle Builders* [1971] Ch 34, [1970] 2 All ER 713 (expulsion from trade union); and **EMPLOYMENT** vol 40 (2009) PARAS 975-976.

5 While the committee's decision is not invalidated by the mere presence of a person who is not a member, it may be rendered invalid if such person participates in the deliberations and decision: *Leary v National Union of Vehicle Builders* [1971] Ch 34 at 53, [1970] 2 All ER 713 at 724 per Megarry J.

6 *Fisher v Keane* (1878) 11 ChD 353; *Innes v Wylie* (1844) 1 Car & Kir 257; *Wood v Woad* (1874) LR 9 Exch 190; *Russell v Russell* (1880) 14 ChD 471; *Gray v Allison* (1909) 25 TLR 531; *D'Arcy v Adamson* (1913) 29 TLR 367.

7 *Fisher v Keane* (1878) 11 ChD 353. This would not generally prevent the admission of hearsay evidence provided the tribunal attaches the appropriate weight of reliance upon it.

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### **239. Reasonable and probable cause for expulsion.**

Under a rule which provides that a member may be expelled if his conduct, in the opinion of the committee, is injurious to the character and interests of the club, the committee must not only act in good faith, and after due notice to the member whose conduct is attacked, but also must act with reasonable and probable cause<sup>1</sup>. The question what is reasonable and probable cause, in such a case, depends in some measure upon the objects of the club<sup>2</sup>. In the case of a political club, pledging oneself to vote for a candidate of another party might reasonably be considered injurious to the interests of the club; but this would not be sufficient in the case of a club whose objects were mainly social, even if the great majority of the members had in fact similar political views<sup>3</sup>.

1 *Dawkins v Antrobus* (1881) 17 ChD 615 at 622, CA, per Jessel MR; *Andrews v Salmon* (1888) 4 TLR 490.

2 *Hopkinson v Marquis of Exeter* (1867) LR 5 Eq 63.

3 *Hopkinson v Marquis of Exeter* (1867) LR 5 Eq 63.

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### **240. Interference by court to prevent expulsion.**

Where the rules providing for expulsion have been strictly observed<sup>1</sup>, and the committee or the members have otherwise acted properly<sup>2</sup>, the court has no jurisdiction to interfere, even though it considers that the committee, or members voting for the expulsion, have in fact come to a

wrong conclusion<sup>3</sup>. The burden of proving want of good faith lies on the person who alleges that he has been wrongfully expelled<sup>4</sup>.

1 See PARA 237.

2 See PARAS 238-239.

3 *Weinberger v Inglis (No 2)* [1919] AC 606, HL; *Thompson v British Medical Association (NSW Branch)* [1924] AC 764, PC; *Richardson-Gardner v Fremantle* (1870) 24 LT 81; *Hopkinson v Marquis of Exeter* (1867) LR 5 Eq 63; *Lyttelton v Blackburne* (1875) 45 LJCh 219; *Dawkins v Antrobus* (1881) 17 ChD 615, CA; *Lambert v Addison* (1882) 46 LT 20; *Harrison v Marquis of Abergavenny, The Constitutional Club* (1887) 57 LT 360, CA; *Seaton v Gould* (1889) 5 TLR 309; *Cassell v Inglis* [1916] 2 Ch 211; *Maclean v Workers' Union* [1929] 1 Ch 602; *Lamberton v Thorpe* (1929) 141 LT 638; and see *Lumiansky v Myddleton* (1934) 78 Sol Jo 223 (withdrawal of licence as boxing manager). Cf the jurisdiction of the court to interfere in cases of expulsion of members of a profession or trade: see eg *Lee v Showmen's Guild of Great Britain* [1952] 2 QB 329, [1952] 1 All ER 1175, CA; and **EMPLOYMENT** vol 40 (2009) PARA 869.

4 *Dawkins v Antrobus* (1881) 17 ChD 615, CA; *Lambert v Addison* (1882) 46 LT 20.

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## 241. Wrongful expulsion from clubs.

The remedy of a member irregularly or improperly expelled from a members' club (if he has such a right of property as is mentioned below) is by a claim, which may be brought against the committee or the trustees and committee, for a declaration that the expulsion is void and that the claimant is still a member of the club, and for an injunction to restrain the committee and their servants, and the servants of the club, from excluding him from the club premises, or preventing him from exercising the rights and privileges of membership<sup>1</sup>, and, it seems, for damages<sup>2</sup>. Unless, however, there has been a breach of contract, a claim for damages will not lie<sup>3</sup>. The foundation of the jurisdiction of the court to interfere at the instance of a member improperly expelled, in order to reinstate him, is the right of property (which need not be a beneficial right in land or chattels<sup>4</sup> and may be a right in contract<sup>5</sup>) vested in the member, of which he is unjustly deprived by the unlawful expulsion<sup>6</sup>.

In the case of a proprietary club, the remedy of a member who alleges that he has been wrongfully expelled<sup>7</sup> is a claim against the proprietor for damages for breach of contract<sup>8</sup>, even after the proprietor has discontinued the club<sup>9</sup>; he may also obtain a declaration that he is still a member<sup>10</sup>. The contract with the proprietor is not of a nature which the court will enforce by injunction<sup>11</sup>.

Judicial review, which is a public law remedy, is not generally available in such cases<sup>12</sup>.

1 *Gray v Allison* (1909) 25 TLR 531.

2 See *Murphy v Synott* [1925] NI 14 (where nominal damages were given); that case concerned a proprietary club but the action appears to have been against the committee, not the proprietor, the affairs of the proprietor, a limited company, not having been regularly conducted. See also *Chamberlain v Boyd* (1883) 11 QBD 407 at 415, CA, per Bowen LJ ('possibly the membership of a club may be a matter of temporal advantage, and the deprivation of it may be an injury or damage of which the law will take cognisance'). The grounds on which Lord MacDermott and Lord Somerville concurred in the decision of *Bonsor v Musicians' Union* [1956] AC 104, [1955] 3 All ER 518, HL, support the view that a claim for damages will lie in respect of wrongful expulsion from a members' club. As to damages generally see **DAMAGES**.

3 See *Abbott v Sullivan* [1952] 1 KB 189 at 193, [1952] 1 All ER 226 at 230, CA, per Sir Raymond Evershed MR, and at 219 and 240 per Morris LJ. See generally **CONTRACT; DAMAGES**.

4 See *Osborne v Amalgamated Society of Railway Servants* [1911] 1 Ch 540 at 562, CA, per Fletcher Moulton LJ. See also *Cohen v National Union of Tailors and Garment Workers* (1962) Times, 13 January (not essential for plaintiff to prove that he was defending a proprietary right in order to obtain an injunction).

5 See *Lee v Showmen's Guild of Great Britain* [1952] 2 QB 329 at 341-342, [1952] 1 All ER 1175 at 1180, CA, per Denning LJ.

6 *Rigby v Connol* (1880) 14 ChD 482 at 487 per Jessel MR; *Innes v Wylie* (1844) 1 Car & Kir 257.

7 If the expulsion is by a committee without the privity of the proprietor, the allegation will be that the member has been wrongfully excluded by the proprietor.

8 *Baird v Wells* (1890) 44 ChD 661, CA; *Lyttelton v Blackburne* (1875) 45 LJCh 219; *Rigby v Connol* (1880) 14 ChD 482 at 487; *Wing v Burn* (1928) 44 TLR 258. In *Murphy v Synott* [1925] NI 14, an injunction would have been granted, but the circumstances were exceptional.

9 *Re Curzon Syndicate Ltd* (1920) 149 LT Jo 232.

10 *Murphy v Synott* [1925] NI 14.

11 *Baird v Wells* (1890) 44 ChD 661 at 676-677, CA, per Stirling J; *Lee v Showmen's Guild of Great Britain* [1952] 2 QB 329 at 342, [1952] 1 All ER 1175 at 1180, CA, per Denning LJ; and see the text and note 12.

12 See *R v Disciplinary Committee of the Jockey Club, ex p Aga Khan* [1993] 2 All ER 853 at 875-876, [1993] 1 WLR 909 at 933, CA, per Hoffmann LJ; *R (on the application of Mullins) v Appeal Board of the Jockey Club* [2005] EWHC 2197 (Admin), (2005) Times, 24 October, [2005] LLR 151.

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## 242. Expulsion from working men's clubs.

Where a member of a registered working men's club<sup>1</sup> alleges that he has been wrongfully expelled the question must be decided in the manner directed by the rules. The decision is binding on all parties without appeal, and is enforceable by application to the county court<sup>2</sup>. The county court may hear and determine such a dispute if the parties agree that it is to be so determined instead of being determined under the rules<sup>3</sup>. Where the rules contain no direction as to disputes, or where no decision is made within 40 days after application for a reference under the rules, the member aggrieved may apply to the county court to hear and determine the matter<sup>4</sup>.

Where a working men's club is not so registered, it is governed by the same principles, as regards the expulsion of members and the remedy for wrongful expulsion, as an unincorporated members' club or proprietary club, as the case may be<sup>5</sup>.

1 As to registered working men's clubs see PARA 211.

2 See *R v Catley, Catley v Bill* (1887) 19 QBD 491; and see the Friendly Societies Act 1974 s 76(1), (2); and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARAS 2251, 2255. See also the Industrial and Provident Societies Act 1965 s 60(1), (3); and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARAS 2534, 2539.

3 See the Friendly Societies Act 1974 s 76(3B); and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARAS 2246, 2255. See also the Industrial and Provident Societies Act 1965 s 60(2); and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 2536.

4 See the Friendly Societies Act 1974 s 79; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARAS 2247, 2255. See also the Industrial and Provident Societies Act 1965 s 60(6); and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 2540.

5 See PARAS 236-241.

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### **C. SUSPENSION ETC**

#### **243. Suspension and other disciplinary proceedings.**

A club's rules may provide for suspension of membership for a certain period, or for other disciplinary proceedings, for example disqualification or exclusion from competitive events organised by the club<sup>1</sup>. Suspension has been described as merely a lesser form of expulsion; both expulsion and suspension are penal, and each deprives the member concerned of the enjoyment of his rights of membership or office. Accordingly, the rules of natural justice *prima facie* apply to any process of suspension in the same way that they apply to expulsion<sup>2</sup> unless it plainly appears, on the true construction of the rules, that the power was intended to be absolute<sup>3</sup>. The remedy for wrongful suspension, or for such disqualification or exclusion, is the same as in the case of wrongful expulsion<sup>4</sup>.

Where a member of a registered working men's club<sup>5</sup> alleges that he has been wrongfully suspended or otherwise disciplined the question must be decided in the manner directed by the rules. The decision is binding on all parties without appeal, and is enforceable by application to the county court<sup>6</sup>. The county court may hear and determine such a dispute if the parties agree that it is to be so determined instead of being determined under the rules<sup>7</sup>. Where the rules contain no direction as to disputes, or where no decision is made within 40 days after application for a reference under the rules, the member aggrieved may apply to the county court to hear and determine the matter<sup>8</sup>.

Where a working men's club is not so registered, it is governed by the same principles as regards the suspension of members, and other disciplinary proceedings, as an unincorporated members' club or proprietary club, as the case may be<sup>9</sup>.

1 See eg *Modahl v British Athletics Federation* [2001] EWCA Civ 1447, [2002] 1 WLR 1192, [2001] All ER (D) 181 (Oct); and see *R v Disciplinary Committee of the Jockey Club, ex p Aga Khan* [1993] 2 All ER 853, [1993] 1 WLR 909, CA; *R (on the application of Mullins) v Appeal Board of the Jockey Club* [2005] EWHC 2197 (Admin), (2005) Times, 24 October, [2005] LLR 151.

2 See *John v Rees* [1970] Ch 345 at 396-397, [1969] 2 All ER 274 at 305 per Megarry J.

3 See PARA 238.

4 See PARA 241.

5 As to registered working men's clubs see PARA 211.

6 See *R v Catley, Catley v Bill* (1887) 19 QBD 491; and see the Friendly Societies Act 1974 s 76(1), (2); and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARAS 2251, 2255. See also the Industrial and Provident Societies Act 1965 s 60(1), (3); and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARAS 2534, 2539.

7 See the Friendly Societies Act 1974 s 76(3B); and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARAS 2246, 2255. See also the Industrial and Provident Societies Act 1965 s 60(2); and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 2536.

8 See the Friendly Societies Act 1974 s 79; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARAS 2247, 2255. See also the Industrial and Provident Societies Act 1965 s 60(6); and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 2540.

9 See PARAS 236-241.

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## **(5) MANAGEMENT, MEETINGS AND STAFF**

### **(i) Managing Committees, Officers and Trustees**

#### **244. Committee.**

The management of the affairs of a member's club is generally entrusted to a committee of the members elected in accordance with provisions in the rules<sup>1</sup>. The extent of the powers of the committee to bind the members, whether as between themselves<sup>2</sup> or as regards contracts with tradesmen and others<sup>3</sup>, depends upon the rules. In the absence of a rule providing that a certain number is to form a quorum, all the members of the committee must join in the exercise of any powers conferred upon them<sup>4</sup>. Sometimes the rules provide for the appointment by the committee of sub-committees for specified purposes, and may authorise the committee to delegate its powers to such a sub-committee.

1 In the case of a registered working men's club, the rules must provide for the appointment and removal of a committee of management: see the Friendly Societies Act 1974 Sch 2 para 5; the Industrial and Provident Societies Act 1965 Sch 1 para 6; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARAS 2156, 2425. As to registered working men's clubs see PARA 211; and as to their rules see PARA 223. In the case of a learned society or other institution to which the Literary and Scientific Institutions Act 1854 applies, the governing body must be the council, directors, committee, or other body to whom, by Act of Parliament, charter, or the rules and regulations of the society, the management of its affairs is entrusted: see s 32; and **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 940.

2 As to the construction of a power to make byelaws see *Lambert v Addison* (1882) 46 LT 20; and PARA 225.

3 See PARA 266 et seq.

4 *Brown v Andrew* (1849) 18 LJQB 153; *Re Liverpool Household Stores Association Ltd* (1890) 59 LJCh 616.

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#### **245. Secretary and steward.**

The functions of the secretary of a club are to conduct the correspondence, collect subscriptions from members, and perform such other work of a clerical nature as may be necessary, and as an employee of the club the secretary is under the direction of the committee or proprietor, as the case may be. The secretary<sup>1</sup> is also responsible for the payment to the relevant licensing authority<sup>2</sup> of an annual fee where the club holds a club premises certificate under the Licensing Act 2003<sup>3</sup>. Either the secretary, or a person nominated by him, must keep the certificate or a certified copy of it at the club premises, display a summary of it at the premises and produce it to a constable or authorised person on request<sup>4</sup>. The secretary of a club holding such a certificate must give the relevant licensing authority notice of any change in the name, or alteration made to the rules, of the club<sup>5</sup>. If a club which holds a club premises certificate ceases to have any authority to make use of the address which is its relevant registered address<sup>6</sup>, and fails to give to the relevant licensing authority notice of the change to be made in that address, the secretary commits an offence<sup>7</sup>.

In the case of an incorporated club<sup>8</sup>, the secretary is responsible for the payment of any corporation tax or other tax chargeable under the Corporation Tax Acts<sup>9</sup>.

The functions of the steward are to attend to the culinary arrangements and the engagement of staff, also under the direction of the committee or proprietor.

1 For the purposes of the Licensing Act 2003, 'secretary', in relation to a club, includes any person, whether or not an officer of the club, performing the duties of a secretary: s 70.

2 As to the meaning of 'relevant licensing authority' see **LICENSING AND GAMBLING** vol 67 (2008) PARA 85; and as to the licensing authorities see **LICENSING AND GAMBLING** vol 67 (2008) PARA 3.

3 See the Licensing Act 2003 s 92; the Licensing Act 2003 (Fees) Regulations 2005, SI 2005/79, reg 7(2); and **LICENSING AND GAMBLING** vol 67 (2008) PARA 94.

4 See the Licensing Act 2003 s 94; and **LICENSING AND GAMBLING** vol 67 (2008) PARA 97.

5 See the Licensing Act 2003 s 98; and **LICENSING AND GAMBLING** vol 67 (2008) PARA 97.

6 As to the meaning of 'relevant registered address' see **LICENSING AND GAMBLING** vol 67 (2008) PARA 39.

7 See the Licensing Act 2003 s 83; and **LICENSING AND GAMBLING** vol 67 (2008) PARA 99.

8 As to incorporated members' clubs see PARA 206.

9 See the Taxes Management Act 1970 ss 108(2), (3)(b), 118(1); the Income Tax Act 2007 s 992(1); and **INCOME TAXATION** vol 23(1) (Reissue) para 844.

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## 246. Treasurer.

The normal functions of the treasurer are to keep the accounts of the club and to make periodical reports upon the state of the finances. His duties may be more precisely prescribed by rule or defined by the club committee<sup>1</sup>. In the case of an unincorporated club<sup>2</sup> he is responsible for the payment of any corporation tax or other tax chargeable under the Corporation Tax Acts<sup>3</sup>.

1 As to rules see PARA 216 et seq.

2 As to unincorporated members' clubs see PARA 205.

3 See the Taxes Management Act 1970 ss 108(2), (3)(b), 118(1); the Income Tax Act 2007 s 992(1); and **INCOME TAXATION** vol 23(1) (Reissue) PARA 844.

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## 247. Trustees.

In an unincorporated members' club there are usually trustees, appointed in pursuance of provisions in the rules, in whom the property and assets of the club are vested in trust for the members for the time being, and who are given power to invest the funds of the club, sometimes at their own discretion, and sometimes according to the directions of the committee<sup>1</sup>. Alterations in the name, affiliation and qualifications for membership of an existing club do not of themselves result in its dissolution. Consequently, the title to property remains vested in existing trustees in trust for the resultant membership<sup>2</sup>.

Every working men's club registered under the Friendly Societies Act 1974<sup>3</sup> must have one or more trustees appointed by a resolution of a majority of the members present at a general meeting or in such other manner as the rules provide<sup>4</sup>. If the trustee is appointed by a resolution, a copy of the resolution appointing him, signed by the trustee so appointed and by the secretary, must be sent to the Financial Services Authority<sup>5</sup>. In the case of appointment in any other manner, notice of his appointment signed by the secretary with acceptance signed by the trustee must be sent to the Authority<sup>6</sup>. The same person may not be secretary or treasurer as well as trustee<sup>7</sup>.

In the case of a learned society or other institution to which the Literary and Scientific Institutions Act 1854 applies<sup>8</sup>, assets and property are normally vested in trustees but if none are appointed and the society is not incorporated, then the money, securities for money, goods, chattels, and personal effects belonging to the society are vested in the governing body<sup>9</sup>.

1 For general provisions regarding the appointment of new trustees and the vesting of property in them see **TRUSTS** vol 48 (2007 Reissue) PARA 818 et seq.

2 *Abbatt v Treasury Solicitor* [1969] 3 All ER 1175, [1969] 1 WLR 1575, CA.

3 As to registered working men's clubs see PARA 211.

4 See the Friendly Societies Act 1974 s 24(1), (2); and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 2179.

5 See the Friendly Societies Act 1974 s 24(3); and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 2179. As to the Financial Services Authority see **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 4 et seq.

6 See the Friendly Societies Act 1974 s 24(4); and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 2179.

7 See the Friendly Societies Act 1974 s 24(6); and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 2179. A minor (ie a person under 18 years: see **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARAS 1, 3) cannot be a member of the committee, a trustee, manager or treasurer: see s 25; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 2172.



8 See PARA 215.

9 See the Literary and Scientific Institutions Act 1854 s 20; and **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 944.

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## **248. Indemnity.**

Neither the trustees nor the committee are entitled to be indemnified by individual members of the club against liabilities incurred by them on behalf of the club, in the absence of provisions in the rules giving such a right of indemnity<sup>1</sup>.

1 *Wise v Perpetual Trustee Co* [1903] AC 139, PC, distinguishing *Hardoon v Belilios* [1901] AC 118, PC, and disapproving the final decree in *Minnitt v Lord Talbot de Malahide* (1881) LR 7 Ir 407 (see PARA 249 note 2). See also *Marston Thompson & Evershed plc v Benn* [1998] 32 Licensing Review 26, [1998] CLY 4875. Members of the committee may be entitled to contribution between themselves as joint contractors: *Earl of Mountcashell v Barber* (1853) 14 CB 53.

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## **249. Lien on property.**

The trustees of a club have a lien<sup>1</sup> on the trust property vested in them for all liabilities properly incurred by them on behalf of the club. Similarly, where, by a resolution at a general meeting, the managing committee of a club was authorised to raise £1,000 for the purpose of improving and adding to the club premises and providing fittings and furniture, and the committee raised the money on the security of a guarantee given by certain individual members of the committee, and this was afterwards approved at the annual general meeting, the money being duly expended for the purpose for which it was borrowed, it was held that the members of the committee who guaranteed the loan and were compelled to repay it, had a lien on the club premises so added to and improved, and on the furniture and other property acquired by means of the money borrowed, and were entitled to a decree for sale of the property in default of repayment<sup>2</sup>.

1 See generally **LIEN**.

2 *Minnitt v Lord Talbot de Malahide* (1876) LR 1 Ir 143. In this case, the property, being sold, proved insufficient to discharge the liability, and the final decree (see (1881) LR 7 Ir 407) declared that the plaintiffs were entitled to be indemnified by the members of the club in respect of the unsatisfied balance, but this portion of the decision cannot now be considered good law: see *Wise v Perpetual Trustee Co* [1903] AC 139, PC; and PARA 248 note 1.

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## (ii) Borrowing

### 250. Powers to borrow; in general.

An unincorporated members' club<sup>1</sup> or registered working men's club<sup>2</sup> has no power to borrow money unless the rules so provide, or unless all the members agree to the proposed borrowing. In the case of a club incorporated under the companies legislation<sup>3</sup>, a power to borrow may be expressly conferred by the memorandum and articles of association or may be implied where it is properly incidental to the course and conduct of the club for its proper purposes<sup>4</sup>. In the case of a learned society or other institution to which the Literary and Scientific Institutions Act 1854 applies<sup>5</sup>, there is no implied power to borrow for purposes not contemplated by that Act<sup>6</sup>; thus an institute founded for the promotion of literature, science and art had no implied power to borrow money to build a new billiard room<sup>7</sup>.

Clubs sometimes borrow money on the security of debentures<sup>8</sup> charging the club property and assets. The authority to issue debentures must be expressly conferred by the memorandum and articles of association in the case of an incorporated club, or by the rules in the case of an unincorporated club<sup>9</sup>.

The debentures need not be under seal. They are valid if signed by the person or persons authorised by the company, or the members of the club, as the case may be<sup>10</sup>.

1 As to unincorporated members' clubs see PARA 205.

2 As to registered working men's clubs see PARA 211.

3 As to incorporated members' clubs see PARA 206.

4 See *Blackburn Building Society v Cunliffe, Brookes & Co* (1882) 22 ChD 61 at 70, CA; affd sub nom *Cunliffe Brooks & Co v Blackburn and District Benefit Building Society* (1884) 9 App Cas 857, HL.

5 See PARA 215.

6 As to the purposes contemplated by the Literary and Scientific Institutions Act 1854 see s 33; and **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 939; and as to the trustees' powers to raise money by mortgage on the buildings see s 19; and **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 953.

7 See *Re Badger, Mansell v Viscount Cobham* [1905] 1 Ch 568 where, however, Buckley J held that money might be raised on mortgage in accordance with the Literary and Scientific Institutions Act 1854 s 19 in order to repair the institute's buildings, including the billiard room.

8 As to the law relating to debentures generally, and the rights and remedies of debenture-holders, see **COMPANIES** vol 14 (2009) PARA 410 et seq.

9 As to the power to pledge members' credit see PARAS 267-268.

10 *British India Steam Navigation Co v IRC* (1881) 7 QBD 165.

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## 251. Liability on debentures.

Debentures generally contain an undertaking to pay the moneys secured. In the case of an incorporated club the undertaking is given in the name of the company and neither the shareholders nor the club members incur any personal liability, apart from their liability as contributories, in the event of a winding up<sup>1</sup>. In the case of an unincorporated members' club, however, a difficulty arises. It would not, as a general rule, be considered convenient that all the members, who may be very numerous, should be jointly bound and, if the amount is large, the trustees or committee may not be willing to accept the responsibility<sup>2</sup>. In such cases the undertaking may be by the trustees or the committee to pay out of the funds of the club, but not otherwise. The effect of this is to make the property and assets charged by the debentures, and the funds of the club, the only security for repayment of the loan<sup>3</sup>.

1 See **COMPANIES**.

2 See *Parr v Bradbury* (1885) 1 TLR 525.

3 In *Wylie v Carlyon* [1922] 1 Ch 51, debentures had been issued containing an acknowledgment by the club of the money received, and an agreement to repay the same with interest, the debentures to be paid off 'as the committee of the club may determine' on three months' notice. The debentures did not contain any charge on the assets of the club. It was held that no such charge was to be implied, and that the obligation to repay did not arise until the committee determined that the debentures were repayable. It was also held that the debenture-holders were not, by subrogation or otherwise, placed in the position of mortgagees, though the money raised had been applied, in part, to pay off a mortgage on the club premises.

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## 252. Registration of debentures.

The debentures of a club incorporated under the companies legislation must be registered in accordance with that legislation<sup>1</sup> but are exempt from the provisions of the Bills of Sale Acts<sup>2</sup>. This exemption does not, however, extend to debentures given by clubs which are unincorporated, even if they are registered as friendly societies<sup>3</sup>. Debentures given by unincorporated clubs should not, therefore, include in the property charged furniture or other personal chattels, because, even if registered under the Bills of Sale Acts<sup>4</sup>, they would be void, at all events so far as concerns the personal chattels, as not being made in accordance with the statutory form<sup>5</sup>.

1 As to the registration of charges generally see the Companies Act 1985 Pt XII (ss 395-424) (repealed with effect from 1 October 2009 by the Companies Act 2006 Sch 16 and replaced by the Companies Act 2006 Pt 25 (ss 860-894)); and **COMPANIES** vol 15 (2009) PARA 1296 et seq.

2 See the Bills of Sale Act (1878) Amendment Act 1882 s 17; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 1684.

3 *Great Northern Rly Co v Coal Co-operative Society* [1896] 1 Ch 187; *Re North Wales Produce and Supply Society Ltd* [1922] 2 Ch 340. Cf **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 1686. As to registration under the Friendly Societies Act 1974 see **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 2149 et seq; and as to registration and incorporation under the Friendly Societies Act 1992 see **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 2110 et seq.

4 The effect of non-registration would be to make them void in respect of the personal chattels: see the Bills of Sale Act (1878) Amendment Act 1882 s 8; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 1824.

5 Bills of Sale Act (1878) Amendment Act 1882 s 9, Schedule. As to the statutory form see **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 1711 et seq.

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### **(iii) Notices and Meetings**

#### **253. Service of notices.**

Where there is no rule prescribing the manner of serving notices on members, it is within the general functions of the committee to say how notices should be given on each particular occasion<sup>1</sup>. In matters which concern only those who habitually use the club, the posting of a notice in the coffee-room or library is sufficient, but in the case of more important matters involving some organic change, or connected with the general mode of conducting the club, or with the conduct of a particular member, notice by circular should be given to those who do not habitually or daily use the club<sup>2</sup>. Failure to send a notice to a member may invalidate the proceedings of the meeting<sup>3</sup> unless the rules provide for this contingency.

1 *Labouchere v Earl of Wharncliffe* (1879) 13 ChD 346 at 352 per Jessel MR.

2 *Labouchere v Earl of Wharncliffe* (1879) 13 ChD 346 at 353 per Jessel MR.

3 See PARA 237 note 7.

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#### **254. Conduct of meetings.**

The conduct of a meeting of the club may be governed by the rules. The rules must be applied in accordance with the principles of natural justice<sup>1</sup>, unless these principles are expressly excluded, in which case the courts may consider whether such an exclusion accords with public policy<sup>2</sup>. The rules may properly provide that a member whose subscription is in arrear is not entitled to vote at a meeting of the club<sup>3</sup>.

It is the duty of the chairman of a meeting to preserve order and to ensure that the proceedings are properly conducted, so that the sense of the meeting regarding any relevant question is duly ascertained. He has no authority to terminate the meeting at his own will and pleasure<sup>4</sup> but has an inherent power to adjourn the proceedings in the event of disorder. This power to adjourn must be exercised bona fide for the purpose of facilitating and forwarding the business and not for the purpose of procrastination. Such adjournment should be for no longer than is required in the circumstances for the restoration of order<sup>5</sup>.

- 1 See **JUDICIAL REVIEW** vol 61 (2010) PARA 629 et seq.
- 2 See PARA 218.
- 3 See PARA 229.
- 4 See *National Dwellings Society v Sykes* [1894] 3 Ch 159 at 162.
- 5 *John v Rees* [1970] Ch 345 at 382, [1969] 2 All ER 274 at 293 per Megarry J.

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#### **(iv) Employment of Staff**

##### **255. Employment of staff; in general.**

The club's rules may contain specific provisions regarding the employment of staff, but if they do not then the management committee of an unincorporated members' club may be so empowered by implication<sup>1</sup>. As a result, members of the committee may become personally liable for the remuneration involved<sup>2</sup> and may not be entitled to be indemnified by individual members of the club<sup>3</sup>. If an individual member, for example the chairman, enters into a service agreement on behalf of the club he should be so authorised by a resolution of the committee in order to safeguard his right of indemnity by other members of that body. Those who engage a servant may become personally liable for damage caused by his negligence<sup>4</sup>. Generally, the relevant provisions of the law relating to employment<sup>5</sup>, health and safety at work<sup>6</sup> and the prohibition of unlawful discrimination in an employment context<sup>7</sup>, apply.

- 1 See PARA 244.
- 2 See PARA 266.
- 3 See PARA 248.
- 4 *Bradley Egg Farm Ltd v Clifford* [1943] 2 All ER 378, CA.
- 5 See generally **EMPLOYMENT**.
- 6 See generally **HEALTH AND SAFETY AT WORK**.
- 7 See generally **DISCRIMINATION**.

Halsbury's Laws of England/CLUBS (VOLUME 13 (2009) 5TH EDITION)/1. CONSTITUTION, MANAGEMENT AND PROPERTY/(5) MANAGEMENT, MEETINGS AND STAFF/(v) Appointment of Auditors/256. Auditors; in general.

#### **(v) Appointment of Auditors**

## 256. Auditors; in general.

The rules of an unincorporated members' club<sup>1</sup> may make provision for the appointment of an auditor, which may be an honorary position. The rules of a registered working men's club<sup>2</sup> must make provision for the appointment of one or more qualified auditors<sup>3</sup> to carry out an annual audit of the accounts and balance sheet<sup>4</sup>, but an audit need not be carried out in relation to any year of account if the value of the club's assets at the end of the preceding year of account did not in the aggregate exceed £2,800,000, and its turnover for that year did not exceed £5,600,000<sup>5</sup>. Where, however, turnover in the preceding year of account exceeded £90,000, the club must, before the end of the period of 28 days beginning immediately after the end of the year of account, appoint an appropriate person to make a report on the society's accounts and balance sheet for the year, and a report relating to the preceding year of account, which meets certain statutory requirements<sup>6</sup>. Furthermore, the Financial Services Authority<sup>7</sup> may give a direction to a registered working men's club in respect of either the current year of account or any relevant year of account of the club preceding that in which the direction is given, requiring it to appoint a qualified auditor or qualified auditors to audit its accounts and balance sheet for that year<sup>8</sup>.

A members' club incorporated under the companies legislation<sup>9</sup> must appoint an auditor or auditors<sup>10</sup>, unless it falls within the statutory exemption for very small companies<sup>11</sup>.

1 As to unincorporated members' clubs see PARA 205.

2 As to registered working men's clubs see PARA 211; and as to their rules see PARA 223.

3 No person is a qualified auditor for these purposes unless he is eligible for appointment as a statutory auditor under the Companies Act 2006 Pt 42 (ss 1209-1264) (see **COMPANIES**): Friendly and Industrial and Provident Societies Act 1968 s 7(1) (amended by SI 1991/1997; SI 2001/2617; SI 2008/948).

4 See the Friendly and Industrial and Provident Societies Act 1968 s 4; the Friendly Societies Act 1974 Sch 2 para 6; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARAS 2156, 2514. See also the Industrial and Provident Societies Act 1965 Sch 1 para 10; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 2425.

5 See the Friendly and Industrial and Provident Societies Act 1968 s 4A; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 2514.

6 See the Friendly and Industrial and Provident Societies Act 1968 s 9A; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 2515. As to the rights of a person appointed under s 9A see s 9B; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 2515.

7 As to the Financial Services Authority see **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 4 et seq.

8 See the Friendly and Industrial and Provident Societies Act 1968 ss 4(6), 9C; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARAS 2514, 2515.

9 As to incorporated members' clubs see PARA 206.

10 See the Companies Act 2006 s 475(1); and **COMPANIES** vol 15 (2009) PARA 905.

11 As to the audit exemption for small companies see the Companies Act 2006 ss 477-479; and **COMPANIES** vol 15 (2009) PARAS 908, 909.

## (6) CLUB PROPERTY

### (i) In Whom Property is Vested

#### 257. Members' clubs.

In a non-proprietary club the members for the time being are jointly entitled to all the property and funds and it is only upon a dissolution<sup>1</sup> that the individual interests of the members become capable of realisation. The property of a non-proprietary club is usually vested in trustees<sup>2</sup> and this is compulsory in respect of clubs registered under the Friendly Societies Act 1974<sup>3</sup>. All property belonging to such a club, whether acquired before or after registration, vests in the trustees for the time being, for the use and benefit of the members<sup>4</sup>; and the trustees may, with the consent of the committee or of a majority of the members present and entitled to vote in general meeting, invest the funds of the club in the purchase of land, or in the erection or alteration of club buildings, or in certain other specified investments<sup>5</sup>. Where a club is registered under the Industrial and Provident Societies Act 1965, it may, unless its registered rules direct otherwise, hold, purchase or take on lease land in its own name<sup>6</sup>.

Club property vested in trustees may be held on trust<sup>7</sup>, and it may be vested in the trustees upon trust to deal with it as the committee of the club directs. The trustees may remain entitled to pass a valid title in property vested in them, despite alterations in the name and rules, change of affiliation and extension of membership of the club<sup>8</sup>.

A gift to a club is valid if it is for a prescribed purpose which is clearly intended to be for the benefit of members for the time being<sup>9</sup>.

1 As to dissolution see PARA 287 et seq.

2 See PARA 247. As to the vesting of personal property of a learned society or other institution to which the Literary and Scientific Institutions Act 1854 applies see s 20; and **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 944.

3 See the Friendly Societies Act 1974 s 54; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARAS 2181, 2185. As to registration under the Friendly Societies Act 1974 see **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 2149 et seq; and as to registration and incorporation under the Friendly Societies Act 1992 see **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 2110 et seq.

4 See the Friendly Societies Act 1974 s 54; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARAS 2181, 2185.

5 See the Friendly Societies Act 1974 s 46; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 2187 et seq. The purchase of land can apparently only be authorised by the rules: see s 53; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 2189.

6 See the Industrial and Provident Societies Act 1965 s 30(1); and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 2494.

7 As to trusts of land see **REAL PROPERTY** vol 39(2) (Reissue) PARA 64 et seq; **SETTLEMENTS** vol 42 (Reissue) PARA 897 et seq; **TRUSTS** vol 48 (2007 Reissue) PARAS 724 et seq, 1033 et seq.

8 *Abbott v Treasury Solicitor* [1969] 3 All ER 1175, [1969] 1 WLR 1575, CA.

9 *Re Lipinski's Will Trusts, Gosschalk v Levy* [1976] Ch 235, [1977] 1 All ER 33, DC. As to gifts for unincorporated institutions generally see **CHARITIES** vol 8 (2010) PARA 62. See also **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 945.

Halsbury's Laws of England/CLUBS (VOLUME 13 (2009) 5TH EDITION)/1. CONSTITUTION, MANAGEMENT AND PROPERTY/(6) CLUB PROPERTY/(i) In Whom Property is Vested/258. Proprietary clubs.

## **258. Proprietary clubs.**

In the case of a proprietary club the whole of the property both real and personal will normally remain vested in the proprietor<sup>1</sup>.

<sup>1</sup> As to the proprietor's liability as occupier see PARA 275.

Halsbury's Laws of England/CLUBS (VOLUME 13 (2009) 5TH EDITION)/1. CONSTITUTION, MANAGEMENT AND PROPERTY/(6) CLUB PROPERTY/(ii) Use of Premises/259. Members' clubs.

## **(ii) Use of Premises**

### **259. Members' clubs.**

In the case of an unincorporated members' club, the contract of membership implies no warranty that the club premises are reasonably safe for purposes for which the members are admitted<sup>1</sup>. If a members' club is incorporated under the companies legislation<sup>2</sup> or under the Industrial and Provident Societies Acts 1965 to 1968<sup>3</sup>, the corporate body will become the occupier of the club premises and will be required to exercise the same common duty of care as is required of the proprietor of a proprietary club<sup>4</sup>.

<sup>1</sup> *Shore v Ministry of Works* [1950] 2 All ER 228, CA; *Robertson v Ridley* [1989] 2 All ER 474, [1989] 1 WLR 872, CA.

<sup>2</sup> See generally **COMPANIES**.

<sup>3</sup> See generally **INDUSTRIAL AND PROVIDENT SOCIETIES**.

<sup>4</sup> See PARA 275.

Halsbury's Laws of England/CLUBS (VOLUME 13 (2009) 5TH EDITION)/1. CONSTITUTION, MANAGEMENT AND PROPERTY/(6) CLUB PROPERTY/(ii) Use of Premises/260. Members' right to retain property.

### **260. Members' right to retain property.**

Although the business of a members' club is either conducted by the members in general meeting or delegated by them to committees in accordance with the rules, no portion of the property may be alienated by the club, except in the ordinary course of the administration of its affairs and for purposes incidental to its objects, without the consent of every member<sup>1</sup>. In other respects the real property of a members' club is subject to the general law governing the use of land. Planning permission will be required for development<sup>2</sup>, restrictive covenants may



be enforced by or against the trustees<sup>3</sup>, and the trustees will be responsible in tort for any nuisance arising from the use of the premises<sup>4</sup>.

1 *Murray v Johnstone* (1896) 23 R 981; *Baker v Jones* [1954] 2 All ER 553, [1954] 1 WLR 1005.

2 See **TOWN AND COUNTRY PLANNING**.

3 See **EQUITY**.

4 See **NUISANCE**.

Halsbury's Laws of England/CLUBS (VOLUME 13 (2009) 5TH EDITION)/1. CONSTITUTION, MANAGEMENT AND PROPERTY/(6) CLUB PROPERTY/(ii) Use of Premises/261. Use of club premises for entertainment or gambling.

### **261. Use of club premises for entertainment or gambling.**

The use of club premises for the provision of dancing, music or other regulated entertainment<sup>1</sup>, where that provision is by or on behalf of a club for members of the club or members of the club and their guests, may be authorised under a club premises certificate issued under the Licensing Act 2003<sup>2</sup>. Clubs which do not hold such a certificate, or which do not restrict admission to members and guests, require a premises licence in order to provide regulated entertainment<sup>3</sup> and must specify a designated premises supervisor<sup>4</sup>. Where it is proposed to use club premises for the provision of regulated entertainment for a period not exceeding 96 hours, that use of the premises may alternatively be authorised by means of a temporary event notice<sup>5</sup>.

The use of club premises for gambling<sup>6</sup> is regulated under the Gambling Act 2005<sup>7</sup> and any gambling on the premises is unlawful unless permitted under that Act<sup>8</sup>. Where facilities for gambling are provided on premises, both an operating licence<sup>9</sup> and a premises licence<sup>10</sup> are normally required, but clubs may qualify for a club gaming permit<sup>11</sup> or a club machine permit<sup>12</sup>, may satisfy the statutory conditions for exempt gaming<sup>13</sup> or for non-commercial gaming<sup>14</sup> or may operate an exempt lottery<sup>15</sup>. Where high-turnover bingo is played in a club, however, an operating licence is required<sup>16</sup>.

1 As to the meaning of 'regulated entertainment' see **LICENSING AND GAMBLING** vol 67 (2008) PARA 31.

2 As to club premises certificates see the Licensing Act 2003 Pt 4 (ss 60-97); and **LICENSING AND GAMBLING** vol 67 (2008) PARA 85 et seq.

3 As to premises licences see the Licensing Act 2003 Pt 3 (ss 11-59); and **LICENSING AND GAMBLING** vol 67 (2008) PARA 53 et seq.

4 As to the meaning of 'designated premises supervisor' see the Licensing Act 2003 s 15; and **LICENSING AND GAMBLING** vol 67 (2008) PARA 55.

5 As to temporary event notices see the Licensing Act 2003 Pt 5 (ss 98-110); and **LICENSING AND GAMBLING** vol 67 (2008) PARAS 108-113.

6 As to the meaning of 'gambling' see **LICENSING AND GAMBLING** vol 67 (2008) PARA 308.

7 As to the control of gambling under the Gambling Act 2005 see **LICENSING AND GAMBLING** vol 67 (2008) PARA 330 et seq; **LICENSING AND GAMBLING** vol 68 (2008) PARA 547 et seq.

8 See the Explanatory Notes to the Gambling Act 2005 para 6. As to the status of such notes see *R (on the application of Westminster City Council) v National Asylum Support Service* [2002] UKHL 38 at [4]-[6], [2002] 4 All ER 654 at [4]-[6], [2002] 1 WLR 2956 at [4]-[6] obiter per Lord Steyn.

9 As to operating licences see the Gambling Act 2005 Pt 5 (ss 65-126); and **LICENSING AND GAMBLING** vol 67 (2008) PARA 349 et seq.

10 As to premises licences see the Gambling Act 2005 Pt 8 (ss 150-213); and **LICENSING AND GAMBLING** vol 67 (2008) PARA 460 et seq.

11 As to club gaming permits see **LICENSING AND GAMBLING** vol 68 (2008) PARAS 581 et seq, 666.

12 As to club machine permits see **LICENSING AND GAMBLING** vol 68 (2008) PARAS 581 et seq, 666.

13 As to exempt gaming see the Gambling Act 2005 s 269; and **LICENSING AND GAMBLING** vol 68 (2008) PARA 665.

14 As to non-commercial gaming see **LICENSING AND GAMBLING** vol 68 (2008) PARAS 651-653.

15 As to exempt lotteries see **LICENSING AND GAMBLING** vol 68 (2008) PARA 659 et seq.

16 See the Gambling Act 2005 s 275; and **LICENSING AND GAMBLING** vol 68 (2008) PARA 667.

Halsbury's Laws of England/CLUBS (VOLUME 13 (2009) 5TH EDITION)/1. CONSTITUTION, MANAGEMENT AND PROPERTY/(6) CLUB PROPERTY/(ii) Use of Premises/262. Supply of alcohol to members and guests.

## **262. Supply of alcohol to members and guests.**

The supply of alcohol<sup>1</sup> to members and guests of a club<sup>2</sup> may be authorised under a club premises certificate issued under the Licensing Act 2003<sup>3</sup>. In addition to the general statutory conditions which a club must satisfy for the purposes of a club premises certificate<sup>4</sup>, the club must satisfy additional conditions with regard to management of the purchase of alcohol for, and the supply of alcohol by, the club<sup>5</sup>, the absence of commission on the purchases of alcohol<sup>6</sup> and the absence of arrangements for any person directly or indirectly to derive any personal pecuniary benefit from the supply of alcohol<sup>7</sup>. Clubs which do not hold a club premises certificate require a premises licence in order to supply alcohol<sup>8</sup> and must specify a designated premises supervisor<sup>9</sup>. Where it is proposed to use club premises for the supply of alcohol for a period not exceeding 96 hours, that use of the premises may alternatively be authorised by means of a temporary event notice<sup>10</sup>.

1 As to the meaning of 'alcohol' see **LICENSING AND GAMBLING** vol 67 (2008) PARA 30.

2 'Supply of alcohol to members or guests' means, in the case of any club: (1) the supply of alcohol by or on behalf of the club to, or to the order of, a member of the club; or (2) the sale by retail of alcohol by or on behalf of the club to a guest of a member of the club for consumption on the premises where the sale takes place, and related expressions are to be construed accordingly: Licensing Act 2003 s 70.

3 As to club premises certificates see the Licensing Act 2003 Pt 4 (ss 60-97); and **LICENSING AND GAMBLING** vol 67 (2008) PARA 85 et seq.

4 As to the general conditions see the Licensing Act 2003 s 62; and **LICENSING AND GAMBLING** vol 67 (2008) PARA 86.

5 See the Licensing Act 2003 s 64(2); and **LICENSING AND GAMBLING** vol 67 (2008) PARA 86.

6 See the Licensing Act 2003 s 64(3); and **LICENSING AND GAMBLING** vol 67 (2008) PARA 86.

7 See the Licensing Act 2003 s 64(4); and **LICENSING AND GAMBLING** vol 67 (2008) PARA 86.

8 As to premises licences see the Licensing Act 2003 Pt 3 (ss 11-59); and **LICENSING AND GAMBLING** vol 67 (2008) PARA 53 et seq.

9 As to the meaning of 'designated premises supervisor' see the Licensing Act 2003 s 15; and **LICENSING AND GAMBLING** vol 67 (2008) PARA 55.

10 As to temporary event notices see the Licensing Act 2003 Pt 5 (ss 98-110); and **LICENSING AND GAMBLING** vol 67 (2008) PARAS 108-113.

Halsbury's Laws of England/CLUBS (VOLUME 13 (2009) 5TH EDITION)/1. CONSTITUTION, MANAGEMENT AND PROPERTY/(6) CLUB PROPERTY/(ii) Use of Premises/263. Prohibition of smoking in enclosed or substantially enclosed areas of club premises.

### **263. Prohibition of smoking in enclosed or substantially enclosed areas of club premises.**

The enclosed or substantially enclosed areas<sup>1</sup> of club premises are, like all such areas open to the public<sup>2</sup>, to be smoke-free<sup>3</sup>. This is subject to an exception in the case of designated bedrooms<sup>4</sup> in members' clubs which offer sleeping accommodation<sup>5</sup>. A self-contained private dwelling on the premises (for example, the living accommodation of a caretaker) is also excepted<sup>6</sup> but it is specifically provided that the power to provide for exceptions by regulations<sup>7</sup> may not be used in order to make any wider exceptions in the case of premises in respect of which a premises licence under the Licensing Act 2003<sup>8</sup> authorising the sale by retail of alcohol<sup>9</sup> for consumption on the premises, or a club premises certificate under that Act<sup>10</sup>, has effect<sup>11</sup>.

It is the duty of any person who occupies or is concerned in the management of smoke-free premises to make sure that no-smoking signs complying with the statutory requirements are displayed in those premises<sup>12</sup>. Failure to comply with this duty is an offence punishable with a fine<sup>13</sup>. It is also an offence punishable with a fine to smoke in a smoke-free place<sup>14</sup>.

It is the duty of any person who controls or is concerned in the management of smoke-free premises to cause a person smoking there<sup>15</sup> to stop smoking<sup>16</sup>. A person who fails to comply with this duty commits an offence punishable with a fine<sup>17</sup>; but it is a defence for a person charged with such an offence to show:

- (1) that he took reasonable steps to cause the person in question to stop smoking; or
- (2) that he did not know, and could not reasonably have been expected to know, that the person in question was smoking; or
- (3) that on other grounds it was reasonable for him not to comply with the duty<sup>18</sup>.

Where there is a persistent failure to comply with the smoke-free legislation, revocation of any premises licence<sup>19</sup> or club premises certificate<sup>20</sup> under the Licensing Act 2003 may be justified in furtherance of the licensing objective<sup>21</sup> of preventing crime and disorder<sup>22</sup>.

The smoke-free legislation is discussed in more detail elsewhere in this work<sup>23</sup>.

1 For these purposes, premises in England are enclosed if they (1) have a ceiling or roof; and (2) except for doors, windows and passageways, are wholly enclosed either permanently or temporarily; and they are substantially enclosed if they have a ceiling or roof but there is (a) an opening in the walls; or (b) an aggregate area of openings in the walls, which is less than half of the area of the walls, including other structures that

serve the purpose of walls and constitute the perimeter of the premises: Smoke-free (Premises and Enforcement) Regulations 2006, SI 2006/3368, reg 2(1), (2). In determining the area of an opening or an aggregate area of openings for these purposes, no account is to be taken of openings in which there are doors, windows or other fittings that can be opened or shut: reg 2(3). 'Roof' includes any fixed or movable structure or device which is capable of covering all or part of the premises as a roof, including, eg, a canvas awning: reg 2(4). For the equivalent definitions applying in Wales see the Smoke-free Premises etc (Wales) Regulations 2007, SI 2007/787, reg 2.

2 For these purposes, premises are 'open to the public' if the public or a section of the public has access to them, whether by invitation or not, and whether on payment or not: Health Act 2006 s 2(7).

3 See the Health Act 2006 s 2(1). Where a club employs staff, the premises are also places of work and the relevant areas in them are to be smoke-free at all times: see s 2(2). For these purposes, 'smoking' refers to smoking tobacco or anything which contains tobacco, or smoking any other substance, and smoking includes being in possession of lit tobacco or of anything lit which contains tobacco, or being in possession of any other lit substance in a form in which it could be smoked; and 'smoke' and other related expressions are to be read accordingly: s 1(2), (3).

4 'A designated bedroom' means a room which (1) is set apart exclusively for sleeping accommodation; (2) has been designated in writing by the person having the charge of the premises in which the room is situated as being a room in which smoking is permitted; (3) has a ceiling and, except for doors and windows, is completely enclosed on all sides by solid, floor-to-ceiling walls; (4) does not have a ventilation system that ventilates into any other part of the premises (except any other designated bedrooms); (5) does not have any door that opens onto smoke-free premises which is not mechanically closed immediately after use; and (6) is clearly marked as a bedroom in which smoking is permitted: Smoke-free (Exemptions and Vehicles) Regulations 2007, SI 2007/765, reg 4(2). For these purposes, 'bedroom' does not include any dormitory or other room that a person in charge of premises makes available under separate arrangements for persons to share at the same time: reg 4(3). These definitions apply in England only: reg 1(2). For equivalent definitions applying in Wales see the Smoke-free Premises etc (Wales) Regulations 2007, SI 2007/787, reg 3(5).

5 See the Smoke-free (Exemptions and Vehicles) Regulations 2007, SI 2007/765, reg 4(1); the Smoke-free Premises etc (Wales) Regulations 2007, SI 2007/787, reg 3(4)(c).

6 See the Smoke-free (Exemptions and Vehicles) Regulations 2007, SI 2007/765, reg 3; the Smoke-free Premises etc (Wales) Regulations 2007, SI 2007/787, reg 3(1).

7 In the Health Act 2006 s 3(1): see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 251.

8 As to premises licences see **LICENSING AND GAMBLING** vol 67 (2008) PARA 53 et seq.

9 As to the meanings of 'sale by retail' and 'alcohol' for the purposes of the Licensing Act 2003 see **LICENSING AND GAMBLING** vol 67 (2008) PARA 30.

10 As to the meaning of 'club premises certificate' see **LICENSING AND GAMBLING** vol 67 (2008) PARA 85.

11 See the Health Act 2006 s 3(3), (4); and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 251.

12 See the Health Act 2006 s 6(1). For the prescribed form of the notices in England see the Smoke-free (Signs) Regulations 2007, SI 2007/923, reg 2; and for the prescribed form of the notices in Wales see the Smoke-free Premises etc (Wales) Regulations 2007, SI 2007/787, reg 5.

13 Health Act 2006 s 6(5), (8). The penalty for such an offence is, in England and Wales, a fine not exceeding level 3 on the standard scale: Smoke-free (Penalties and Discounted Amounts) Regulations 2007, SI 2007/761, regs 1(2), 2(1). Alternatively, a fixed penalty notice may be issued, in which case the amount of the penalty is £200, or £150 if payment is made before the end of the period for payment of the discounted amount: see the Health Act 2006 s 9, Sch 1 paras 5, 7(1), 8; the Smoke-free (Penalties and Discounted Amounts) Regulations 2007, SI 2007/761, reg 4. The period for payment of the discounted amount is the period of 15 days beginning with the day on which the notice is given, unless the fifteenth day is not a working day: Health Act 2006 Sch 1 para 7(2). If the fifteenth day is not a working day, that period is the period beginning with the day on which the notice is given and ending immediately after the first working day following the fifteenth day: Sch 1 para 7(3). 'Working day' means any day which is not Saturday, Sunday, Christmas Day, Good Friday or a day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971: Health Act 2006 Sch 1 para 7(4). The 'standard scale' means the standard scale of maximum fines for summary offences as set out in the Criminal Justice Act 1982 s 37: see the Interpretation Act 1978 s 5, Sch 1 (definition added by the Criminal Justice Act 1988 s 170(1), Sch 15 para 58); and **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142. At the date at which this volume states the law, the standard scale is as follows: level 1, £200; level 2, £500; level 3, £1,000; level 4, £2,500; level 5, £5,000: Criminal Justice Act 1982 s

37(2) (substituted by the Criminal Justice Act 1991 s 17(1)). As to the determination of the amount of the fine actually imposed, as distinct from the level on the standard scale which it may not exceed, see the Criminal Justice Act 2003 s 164; **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 144.

It is a defence for a person charged with such an offence to show (1) that he did not know, and could not reasonably have been expected to know, that the premises were smoke-free; or (2) that he did not know, and could not reasonably have been expected to know, that no-smoking signs complying with the statutory requirements were not being displayed in accordance with those requirements; or (3) that on other grounds it was reasonable for him not to comply with the duty: s 6(6). If a person charged with such an offence relies on a defence in s 6(6), and evidence is adduced which is sufficient to raise an issue with respect to that defence, the court must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not: s 6(7).

14 Health Act 2006 s 7(2), (6). The penalty for such an offence is, in England and Wales, a fine not exceeding level 3 on the standard scale: Smoke-free (Penalties and Discounted Amounts) Regulations 2007, SI 2007/761, regs 1(2), 2(2). Alternatively, a fixed penalty notice may be issued, in which case the amount of the penalty is £50, or £30 if payment is made before the end of the period for payment of the discounted amount (see note 13): see the Health Act 2006 Sch 1 paras 5, 7(1), 8; the Smoke-free (Penalties and Discounted Amounts) Regulations 2007, SI 2007/761, reg 5.

It is a defence for a person charged with such an offence to show that he did not know, and could not reasonably have been expected to know, that it was a smoke-free place: Health Act 2006 s 7(4). If a person charged with such an offence relies on a defence in s 7(4), and evidence is adduced which is sufficient to raise an issue with respect to that defence, the court must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not: s 7(5).

15 He unless he is exempted because he is taking part in a theatrical performance: see **LICENSING AND GAMBLING** vol 67 (2008) PARA 240.

16 Health Act 2006 s 8(1), (2).

17 Health Act 2006 s 8(4), (7). The penalty for such an offence is, in England and Wales, a fine not exceeding level 4 on the standard scale: Smoke-free (Penalties and Discounted Amounts) Regulations 2007, SI 2007/761, regs 1(2), 2(3).

18 Health Act 2006 s 8(5). If a person charged with such an offence relies on a defence in s 8(5), and evidence is adduced which is sufficient to raise an issue with respect to that defence, the court must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not: s 8(6).

19 As to premises licences see **LICENSING AND GAMBLING** vol 67 (2008) PARA 53 et seq.

20 As to club premises certificates see **LICENSING AND GAMBLING** vol 67 (2008) PARA 85 et seq.

21 He the objective under the Licensing Act 2003 s 4(2)(a): see **LICENSING AND GAMBLING** vol 67 (2008) PARA 35. On the true construction of s 4(2)(a), the word 'and' is used disjunctively and therefore the licensing objectives created thereby are the prevention of crime and/or the prevention of disorder: *Blackpool Council v Howitt* [2008] EWHC 3300 (Admin), [2009] 4 All ER 154.

22 See *Blackpool Council v Howitt* [2008] EWHC 3300 (Admin), [2009] 4 All ER 154, where a licensee's premises certificate was revoked for breaches of the Health Act 2006 s 8.

23 See **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 250 et seq.

## UPDATE

### 263 Prohibition of smoking in enclosed or substantially enclosed areas of club premises

NOTES 13, 14, 17--For SI 2007/761 read SI 2007/764.

Halsbury's Laws of England/CLUBS (VOLUME 13 (2009) 5TH EDITION)/1. CONSTITUTION, MANAGEMENT AND PROPERTY/(6) CLUB PROPERTY/(ii) Use of Premises/264. Reasonable adjustments to club premises to facilitate use by disabled members or guests.

**264. Reasonable adjustments to club premises to facilitate use by disabled members or guests.**

Where a physical feature makes or would make it impossible or unreasonably difficult for disabled persons<sup>1</sup> who are members, associates or guests of an association to make use of a benefit, facility or service which that association provides, or is prepared to provide, to other members, associates or guests as the case may be, it is the duty of the association providing that benefit, facility or service to take such steps as it is reasonable in all the circumstances to take<sup>2</sup> in order to:

- (1) remove the feature;
- (2) alter it so that it no longer has that effect;
- (3) provide a reasonable means of avoiding the feature; or
- (4) provide a reasonable alternative method of making the benefit, facility or service in question available to disabled persons who are members, associates or guests<sup>3</sup>.

This duty to take steps for a purpose relating to a physical feature applies, for example, to the following physical features (whether permanent or temporary):

- (a) any feature arising from the design or construction of a building on the premises occupied by the association;
- (b) any feature on the premises occupied by the association of any approach to, exit from or access to such a building;
- (c) any fixtures, fittings, furnishings, furniture, equipment or materials in or on the premises occupied by the association;
- (d) any fixtures, fittings, furnishings, furniture, equipment or materials brought by or on behalf of the association on to premises (other than the premises that they occupy):
  3. (i) in the course of providing benefits, facilities or services;
  4. (ii) for the purpose of providing such benefits, facilities or services;
- (e) any other physical element or quality of any land comprised in the premises occupied by the association<sup>4</sup>.

It is unlawful for an association to discriminate<sup>5</sup> against a disabled person who is a member, associate or guest by failing to comply with a duty so imposed on it in circumstances in which the effect of that failure is to make it impossible or unreasonably difficult for the disabled person who is a member, associate or guest to make use of any benefit, facility or service which it provides, or is prepared to provide, to other members, associates or guests as the case may be<sup>6</sup>. Failure to comply with such a duty is justified only if, in the opinion of the association, one or both of the statutory conditions<sup>7</sup> is or are satisfied, and it is reasonable, in all the circumstances, for it to hold that opinion<sup>8</sup>. The duty set out above does not, however, require an association to take any steps which would fundamentally alter the nature of the benefits, facilities or services in question or the nature of the association, or a member or associate of an association which meets in that member's or associate's private house to make any adjustments to a physical feature in relation to that member's or associate's private house<sup>9</sup>.

- 1 As to the meaning of 'disabled person' see **DISCRIMINATION** vol 13 (2007 Reissue) PARA 511.
- 2 The Disability Discrimination (Private Clubs etc) Regulations 2005, SI 2005/3258, reg 11 prescribes particular circumstances, for the purposes of reg 6(2) (see heads (1)-(4) in the text), in which it is reasonable, and in which it is not reasonable, for an association to have to take the steps specified in reg 11; and reg 12 prescribes particular circumstances, for the purposes of reg 6(2), in which it is not reasonable for an association to have to take the steps specified in reg 12: see regs 11(1), 12(1). Where under any binding obligation an association is required to obtain the consent of any person to an alteration to premises which it occupies, and that alteration is one which, but for that requirement, it would be reasonable for the association to have to make in order to comply with a duty under reg 6(2), it is reasonable for the association to have to request that consent; but it is not reasonable for it to have to make that alteration before that consent is obtained: reg 11(2). For these purposes, 'binding obligation' means a legally binding obligation (not contained in a lease) in relation to premises whether arising from an agreement or otherwise: reg 11(3). It is not reasonable for an association to have to remove or alter a physical feature where the feature concerned was provided in or in connection with a building for the purpose of assisting people to have access to the building or to use facilities provided in the building and satisfies the relevant design standard: reg 12(2). Whether a physical feature satisfies the relevant design standard is to be determined in accordance with the Schedule: reg 12(3).
- 3 Disability Discrimination (Private Clubs etc) Regulations 2005, SI 2005/3258, reg 6(2). See also the Disability Discrimination Act 1995 s 21H; and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 598.
- 4 Disability Discrimination (Private Clubs etc) Regulations 2005, SI 2005/3258, reg 10.
- 5 As to the meaning of 'discrimination' for these purposes see the Disability Discrimination Act 1995 s 21G; and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 597.
- 6 Disability Discrimination (Private Clubs etc) Regulations 2005, SI 2005/3258, reg 6(4).
- 7 In the conditions mentioned in the Disability Discrimination (Private Clubs etc) Regulations 2005, SI 2005/3258, reg 13(2). The conditions are that (1) the non-compliance with the duty is necessary in order not to endanger the health or safety of any person (which may include that of the disabled person); (2) subject to reg 13(3), the disabled person is incapable of entering into an enforceable agreement, or of giving an informed consent, and for that reason the non-compliance with the duty is reasonable in that case: reg 13(2). The condition at reg 13(2)(b) (see head (2) above) does not apply where another person is acting for a disabled person by virtue of (a) a power of attorney; or (b) being a deputy appointed by the Court of Protection; or (c) powers exercisable in relation to the disabled person's property or affairs in consequence of the appointment, under the law of Scotland, of a guardian, tutor or judicial factor: reg 13(3) (amended by SI 2007/1898).
- 8 Disability Discrimination (Private Clubs etc) Regulations 2005, SI 2005/3258, reg 13(1). As to justification see further the Disability Discrimination Act 1995 s 21G; and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 597. See also the Disability Discrimination (Private Clubs etc) Regulations 2005, SI 2005/3258, regs 3-5 (reg 3 amended by SI 2007/1898).
- 9 Disability Discrimination (Private Clubs etc) Regulations 2005, SI 2005/3258, reg 14.

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## **265. Other reasonable adjustments.**

Where an association has a practice, policy or procedure which makes or would make it impossible or unreasonably difficult for disabled persons<sup>1</sup> who are members, associates or guests to make use of a benefit, facility or service which it provides, or is prepared to provide, to other members, associates or guests as the case may be, it is the duty of the association to take such steps as it is reasonable in all the circumstances to take in order to change that practice, policy or procedure so that it no longer has that effect<sup>2</sup>.

Where an auxiliary aid or service (for example, the provision of information on audio tape or of a sign language interpreter) would:

- (1) enable disabled persons who are members, associates or guests to make use of a benefit, facility or service which an association provides, or is prepared to provide, to other members, associates or guests as the case may be; or
- (2) facilitate the use by disabled persons who are members, associates or guests of such a benefit, facility or service,

it is the duty of the association providing that benefit, facility or service to take such steps as it is reasonable in all the circumstances to take in order to provide that auxiliary aid or service<sup>3</sup>.

It is unlawful for an association to discriminate<sup>4</sup> against a disabled person who is a member, associate or guest by failing to comply with a duty so imposed on it in circumstances in which the effect of that failure is to make it impossible or unreasonably difficult for the disabled person who is a member, associate or guest to make use of any benefit, facility or service which it provides, or is prepared to provide, to other members, associates or guests as the case may be<sup>5</sup>.

Where an association has a practice, policy or procedure which makes it impossible or unreasonably difficult for disabled persons, in comparison with persons who are not disabled, to be invited as guests of the association, it is the duty of the association to take such steps as it is reasonable in all the circumstances to take in order to change that practice, policy or procedure so that it no longer has that effect<sup>6</sup>. Where an auxiliary aid or service would enable disabled persons to be invited as guests of the association, or facilitate disabled persons being invited as guests, it is the duty of the association to take such steps as it is reasonable in all the circumstances to take in order to provide that auxiliary aid or service<sup>7</sup>. It is unlawful for an association to discriminate against a disabled person by failing to comply with a duty so imposed on it in circumstances in which the effect of that failure is to make it impossible or unreasonably difficult for the disabled person, in comparison with persons who are not disabled, to be invited as a guest of the association<sup>8</sup>.

Failure to comply with such a duty is justified only if, in the opinion of the association, one or both of the statutory conditions<sup>9</sup> is or are satisfied, and it is reasonable, in all the circumstances, for it to hold that opinion<sup>10</sup>. The duties set out above do not, however, require an association to take any steps which would fundamentally alter the nature of the benefits, facilities or services in question or the nature of the association, or a member or associate of an association which meets in that member's or associate's private house to make any adjustments to a physical feature in relation to that member's or associate's private house<sup>11</sup>.

1 As to the meaning of 'disabled person' see **DISCRIMINATION** vol 13 (2007 Reissue) PARA 511.

2 Disability Discrimination (Private Clubs etc) Regulations 2005, SI 2005/3258, reg 6(1). See also the Disability Discrimination Act 1995 s 21H; and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 598.

3 Disability Discrimination (Private Clubs etc) Regulations 2005, SI 2005/3258, reg 6(3).

4 As to the meaning of 'discrimination' for these purposes see the Disability Discrimination Act 1995 s 21G; and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 597.

5 Disability Discrimination (Private Clubs etc) Regulations 2005, SI 2005/3258, reg 6(4).

6 Disability Discrimination (Private Clubs etc) Regulations 2005, SI 2005/3258, reg 9(1).

7 Disability Discrimination (Private Clubs etc) Regulations 2005, SI 2005/3258, reg 9(2).

8 Disability Discrimination (Private Clubs etc) Regulations 2005, SI 2005/3258, reg 9(3).

9 I.e the conditions mentioned in the Disability Discrimination (Private Clubs etc) Regulations 2005, SI 2005/3258, reg 13(2): see PARA 264 note 7.



10 Disability Discrimination (Private Clubs etc) Regulations 2005, SI 2005/3258, reg 13(1). As to justification see further the Disability Discrimination Act 1995 s 21G; and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 597. See also the Disability Discrimination (Private Clubs etc) Regulations 2005, SI 2005/3258, regs 3-5 (reg 3 amended by SI 2007/1898).

11 Disability Discrimination (Private Clubs etc) Regulations 2005, SI 2005/3258, reg 14.

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## **2. CLUBS AND THEIR MEMBERS IN EXTERNAL RELATIONS**

### **(1) POSITION IN CONTRACT AS REGARDS THIRD PERSONS**

#### **(i) Unincorporated Members' Clubs**

##### **A. LIABILITY OF MEMBERS**

##### **266. General principles of agency apply.**

An unincorporated members' club is not a partnership nor an association which, as an association, is legally recognised<sup>1</sup>; and questions frequently arise as to who are the persons liable for goods supplied to such a club, or on contracts professedly made on its behalf. These questions depend on the ordinary principles of agency<sup>2</sup>. The person supplying the goods must proceed against the persons who gave or authorised the giving of the order; he must prove that the defendants, either by themselves or by their agent, entered into the contract<sup>3</sup>. The trustees and committee of management have only such authority to contract on behalf of the members generally as may be given to them expressly or by necessary implication by the rules<sup>4</sup>. Members of the committee of management, as such, have no power to pledge the credit of other members of the committee<sup>5</sup>.

1 See PARA 205.

2 See **AGENCY** vol 1 (2008) PARA 1 et seq.

3 *Fleming v Hector* (1836) 2 M & W 172 at 183 per Parke B; *Andrews' and Alexander's Case* (1869) LR 8 Eq 176 at 195 per James V-C; *Hawke v Cole* (1890) 62 LT 658; *Draper v Earl Manvers* (1892) 9 TLR 73. See also **AGENCY** vol 1 (2008) PARA 125.

4 *Steele v Gourley and Davis* (1887) 3 TLR 772 at 773, CA, per Lord Esher MR; *Cockerell v Aucompte* (1857) 2 CBNS 440. See also *Lascelles v Rathbun* (1919) 35 TLR 347, CA (commanding officer not liable for the price of goods supplied for a regimental mess on the orders of the mess committee).

5 *Overton v Hewett* (1886) 3 TLR 246; *Steele v Gourley and Davis* (1887) 3 TLR 772, CA; *Whillier v Roberts* (1873) 28 LT 668.

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PERSONS/(i) Unincorporated Members' Clubs/A. LIABILITY OF MEMBERS/267. Power to pledge credit of members.

### **267. Power to pledge credit of members.**

Neither the trustees, the members of the managing committee, the steward, the secretary, nor any other officials of a members' club, have any authority, merely by reason of acting in that capacity, to pledge the credit of the members by contracting on their behalf<sup>1</sup>. They have only such authority as may be given, expressly or by implication, by the rules of the club<sup>2</sup>; and rules will not be construed as giving authority to pledge the credit of the members in the absence of a plain indication of an intention to that effect, because it is generally understood that persons, by joining such a club, do not intend to incur any liability beyond the payment of their subscriptions for so long as they remain members<sup>3</sup>. The fact that the members of a society have entrusted its affairs and management to a committee does not necessarily give the committee authority to make contracts binding on the members, especially in a case where the members have no interest in the society's funds<sup>4</sup>.

A rule providing that all the concerns of the club, the domestic and other arrangements, are to be conducted by a committee, does not of itself empower the committee to pledge the credit of the members by borrowing on debentures or otherwise<sup>5</sup>; nor under such a rule has the committee authority to purchase wine or provisions on credit for consumption in the club, for it is presumed, in the absence of a plain indication of a contrary intention, that the committee is intended to purchase such things for ready money and to pay for them out of the funds in hand<sup>6</sup>. But in the case of engaging staff for the establishment, where there must necessarily be credit for a certain period, it seems that the committee could be presumed to be authorised to pledge the credit of members<sup>7</sup>.

1 *Cockerell v Aucompte* (1857) 2 CBNS 440; *Re St James's Club* (1852) 2 De GM & G 383 at 390 per Lord St Leonards, LC. As to the personal liability of members of a committee of management see PARA 273.

2 See the cases cited at note 1.

3 *Wise v Perpetual Trustee Co* [1903] AC 139, PC. As to the scope of a managing committee's authority see PARA 269.

4 *Bradley Egg Farm Ltd v Clifford* [1943] 2 All ER 378, CA (where members of an executive council were held personally liable on contracts made by their servants).

5 *Re St James's Club* (1852) 2 De GM & G 383. See *Re Badger, Mansell v Viscount Cobham* [1905] 1 Ch 568 at 574. As to borrowing by clubs see PARA 250 et seq.

6 *Todd v Emly* (1841) 7 M & W 427; *Fleming v Hector* (1836) 2 M & W 172.

7 *Todd v Emly* (1841) 7 M & W 427 at 434 per Parke B. See also PARA 272.

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### **268. Payment for expenses.**

Whenever the management committee or other agents of a club are provided with funds, it is their duty to pay all the expenses out of those funds, and, if they find that they are insufficient,

to call a meeting of the members and ask for further subscriptions<sup>1</sup>. In such a case, they have no power to pledge the credit of the members without express authority<sup>2</sup> and, in the absence of authority, the mere fact that the articles purchased on credit have been used by, or applied for the benefit of, the members generally will not render the members liable<sup>3</sup>. On the other hand, the members will be liable where the secretary is authorised, under the rules, to enter into contracts on credit, but the club retains control over its funds<sup>4</sup>.

1 *Flemyng v Hector* (1836) 2 M & W 172 at 182 per Lord Abinger CB.

2 *Overton v Hewett* (1886) 3 TLR 246; *Wood v Finch* (1861) 2 F & F 447; *Draper v Earl Manvers* (1892) 9 TLR 73; *Flemyng v Hector* (1836) 2 M & W 172.

3 *Flemyng v Hector* (1836) 2 M & W 172; *Draper v Earl Manvers* (1892) 9 TLR 73.

4 *Cockerell v Aucompte* (1857) 2 CBNS 440.

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## **269. Importance of scope of authority.**

The members of a club may be liable on contracts entered into by the trustees, management committee or other agents, either because the contracts are within the scope of the authority given by the rules, or because, though they are beyond the scope of such authority, the members who are sought to be made liable can be shown to have sanctioned or subsequently ratified the particular transactions<sup>1</sup>, or to have held out the persons entering into them as being authorised to do so<sup>2</sup>.

Where the contract is within the scope of the agent's actual authority to bind the members generally, and is in fact made on their behalf, they are liable, even when the agent does not disclose the identity of his principal<sup>3</sup>, but an agent is usually personally liable if he fails to disclose that he is acting only as agent<sup>4</sup>. If he executes a deed in his own name he is personally liable whether or not he is acting for a principal, but in the case of bills of exchange and other negotiable instruments he is generally not liable unless he signs in his own name<sup>5</sup>.

Where the contract is beyond the scope of the agent's actual authority, and he professes to act on his own behalf, members cannot become bound by a subsequent ratification, even if the agent intended to act on behalf of the members generally<sup>6</sup>, nor can members become bound by ratification if the other contracting party erroneously gave credit to the club as a legal entity, and not to the members individually<sup>7</sup>.

1 *Delauney v Strickland* (1818) 2 Stark 416; *Steele v Gourley and Davis* (1887) 3 TLR 772 at 773, CA, per Lord Esher MR; *Flemyng v Hector* (1836) 2 M & W 172 at 185 per Parke B. As to ratification see **AGENCY** vol 1 (2008) PARA 57 et seq.

2 *Steele v Gourley and Davis* (1887) 3 TLR 772, CA.

3 See **AGENCY** vol 1 (2008) PARA 62.

4 See **AGENCY** vol 1 (2008) PARA 61.

5 See **AGENCY** vol 1 (2008) PARAS 127-128; **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARA 1474.

6 *Keighley, Maxsted & Co v Durant* [1901] AC 240, HL. See **AGENCY** vol 1 (2008) PARA 124.

7 *Jones v Hope* (1880) 3 TLR 247n, CA; *Overton v Hewett* (1886) 3 TLR 246.

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## **270. Right of members to sue on contract.**

The right of the members of a club to sue on a contract made on their behalf depends, as a general rule, upon the same principles as govern their liability to be sued, whether by reason of ratification or otherwise; that is to say, whenever the circumstances are such that the members are bound by a contract, they also have, generally speaking, a right to enforce it<sup>1</sup>.

1 See **AGENCY** vol 1 (2008) PARA 125 et seq. In unsuccessful proceedings brought by members of an unincorporated members' club it was held that the insurer of club property was entitled to enforce a judgment against individual members, but not the associated order for costs: *Howells v Dominion Insurance Co Ltd* [2005] EWHC 552 (QB), [2005] All ER (D) 29 (Apr).

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## **271. Rights and liabilities of parties to claim.**

The rights and liabilities of members of a club in contracts made on their behalf are prima facie joint only and all the members should be joined as claimants or defendants, as the case may be, in any claim on such a contract<sup>1</sup> although representative proceedings<sup>2</sup> may be brought in suitable cases. If judgment is obtained against some only of the members jointly liable that judgment, though unsatisfied, is not a bar to any proceedings against the other members on the same contract<sup>3</sup>. Any member who discharges more than his own proper share of the liability is entitled to claim contribution from the other members, whether they were parties to the proceedings on the contract or not<sup>4</sup>.

1 *Everett v Tindall* (1804) 5 Esp 169 (where a contract for the purchase of a quantity of coal was made on behalf of the members of a coal club, and it was held that no member could sue separately in respect of alleged short measure, although separate deliveries were made to each member by the seller). As to claims by and against clubs see further PARAS 279-281.

2 See PARA 279.

3 See the Civil Liability (Contribution) Act 1978 s 3; and **DAMAGES** vol 12(1) (Reissue) PARA 838.

4 *Boulter v Peplow* (1850) 9 CB 493; *Batard v Hawes* (1853) 2 E & B 287.

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## **B. LIABILITY OF MANAGING COMMITTEE AND OFFICERS**

### **272. Liability of managing committee.**

Where the steward or secretary orders goods on credit by the authority of members of the managing committee, such of the members as gave the authority or acquiesced in the dealing on credit are personally liable<sup>1</sup>. It is not necessary to show that the members who are sought to be made liable specifically authorised or acquiesced in the particular transaction, or even that they had actual knowledge of it; it is sufficient if they knew of and acquiesced in other transactions of the same kind and so held themselves out, or allowed themselves to be held out, as having authorised dealings on credit<sup>2</sup>.

If the steward or secretary is merely authorised to buy for ready money, and is furnished with a fund out of which to pay for goods ordered, the trustees and members of the managing committee are under no liability in respect of dealings by him on credit<sup>3</sup>; and although some members of the managing committee may sanction dealings on credit, it does not follow that they are all liable. If the committee has control of a fund for payment of expenses, and the rules of the club do not contemplate dealings on credit, only those who individually authorise or acquiesce in such dealings are liable<sup>4</sup>.

1 *Stansfield v Ridout* (1889) 5 TLR 656.

2 *Harper v Granville-Smith* (1891) 7 TLR 284; *Steele v Gourley and Davis* (1887) 3 TLR 772 at 773, CA, per Lord Esher MR; *Barnett and Scott v Wood* (1888) 4 TLR 278, CA; *Rowntrees of London (Builders) Ltd v Screenwriters Club Ltd* (1953) 162 Estates Gazette 352, CA (the ordinary inference is that the secretary or steward orders goods on behalf of the club and if the committee seeks to show that such is not the case, it must give evidence to that effect); and see *Pilot v Craze* (1888) 4 TLR 453 (where the stewards of a fête were held liable on orders given by the manager for tents etc).

3 *Overton v Hewett* (1886) 3 TLR 246; *Wood v Finch* (1861) 2 F & F 447.

4 *Steele v Gourley and Davis* (1887) 3 TLR 772, CA; *Draper v Earl Manvers* (1892) 9 TLR 73; *Todd v Emly* (1841) 8 M & W 505; *Duke of Queensbury v Cullen* (1787) 1 Bro Parl Cas 396, HL; and see *Hawke v Cole* (1890) 62 LT 658 (where it was held that an individual member of an officers' mess was not liable on orders of the wine-caterer in the absence of evidence of authority to pledge his credit).

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### **273. Personal liabilities of club's officers and agents.**

Trustees, members of the managing committee, or other agents, contracting or purporting to contract on behalf of a club, may incur a personal liability, either by reason of the form or terms of the contract, or because in making the contract they are acting in excess of their authority<sup>1</sup>.

If such persons contract in their own names, they are prima facie personally liable, and may be sued without joining other members of the club, even though they may have been duly authorised to enter into the contract on behalf of the members generally<sup>2</sup>. If they were so authorised, the other contracting party may elect either to sue them, as having contracted personally, or to sue the members, as the principals on whose behalf the contract was made<sup>3</sup>. This rule applies whether the principals were or were not disclosed at the time of the making of the contract, except in the case of deeds and bills of exchange or other negotiable instruments<sup>4</sup>.

Every person who purports to contract on behalf of another is deemed to warrant the existence in fact of the necessary authority to bind the other<sup>5</sup>. It follows that if a person professes to contract on behalf of a club without having authority to bind the members generally, he is liable to be sued by the other contracting party for damages for breach of warranty of authority, and it is immaterial that he acted in the bona fide belief that he was duly authorised<sup>6</sup>; but he will not be liable if the other party knows that he has no authority<sup>7</sup>. If, for instance, a person purported to contract on behalf of an unincorporated members' club<sup>8</sup> as a legal entity, and the other contracting party was aware of the nature of the constitution of the club, but contracted in the belief that it might, as a legal entity, be bound, he would have no right of action for breach of an implied warranty of authority<sup>9</sup>; nor can the other contracting party recover damages for breach of warranty unless he was misled by the assumption of authority on the part of the professing agent<sup>10</sup>.

1 See *Earl Mountcashell v Barber* (1853) 14 CB 53. See also PARA 272; and **AGENCY** vol 1 (2008) PARA 124. As to the right of the trustees or committee to indemnity see PARA 248.

2 *Duke of Queensbury v Cullen* (1787) 1 Bro Parl Cas 396, HL; *Todd v Emly* (1841) 7 M & W 427 at 430; *Lee v Bissett* (1856) 4 WR 233; cf *Whillier v Roberts* (1873) 28 LT 668.

3 *Duke of Queensbury v Cullen* (1787) 1 Bro Parl Cas 396, HL; and see **AGENCY** vol 1 (2008) PARAS 125, 128. See also PARA 271.

4 See PARA 269.

5 *Collen v Wright* (1857) 8 E & B 647; *Yonge v Toynbee* [1910] 1 KB 215, CA; and see **AGENCY** vol 1 (2008) PARA 160.

6 *Overton v Hewett* (1886) 3 TLR 246.

7 *Eaglesfield v Marquis of Londonderry* (1878) 38 LT 303, HL; *Jones v Hope* (1880) 3 TLR 247n, CA; *Halbot v Lens* [1901] 1 Ch 344.

8 As to unincorporated members' clubs see PARA 205.

9 *Jones v Hope* (1880) 3 TLR 247n, CA; *Overton v Hewett* (1886) 3 TLR 246.

10 *Halbot v Lens* [1901] 1 Ch 344.

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## **(ii) Proprietary and Incorporated Clubs**

### **274. Contracts on behalf of proprietary and incorporated clubs.**

The rights and liabilities arising out of contracts made on behalf of proprietary and incorporated clubs<sup>1</sup> depend on the ordinary rules and principles applicable to the contracts of traders and trading companies generally<sup>2</sup>. When making a contract, the committee, steward and secretary must prima facie be deemed to be acting on behalf of the proprietor in the case of a proprietary club, or, in the case of an incorporated club, on behalf of the company<sup>3</sup>. The proprietor (or proprietors, if more than one) may be sued in the club name on any contract made by him or them in connection with a proprietary club<sup>4</sup>.

A proprietor is in the position of bailee with regard to any articles left by a member in the safe-keeping of him or his employee, that is he must take reasonable care of the goods handed to him<sup>5</sup>, and if he fails to take reasonable care in the selection of employees he uses for that purpose he may be liable in negligence, notwithstanding any provision in the rules purporting to exclude his duty of care<sup>6</sup>. Notices limiting a club's liability for a member's property must be brought to the notice of the member before, not after, he joins the club<sup>7</sup>.

At the date at which this volume states the law, goods upon the club premises belonging to members are liable to be seized under a distress for rent<sup>8</sup>. The common law remedy of distress for rent is, however, prospectively abolished by the Tribunals, Courts and Enforcement Act 2007<sup>9</sup>.

1 As to proprietary and incorporated clubs see PARA 209 et seq.

2 See **AGENCY** vol 1 (2008) PARA 8; and see generally **COMPANIES; CONTRACT; SALE OF GOODS AND SUPPLY OF SERVICES**.

3 A payment by a person dealing with a company to a managing director or chief executive of the company charged with the negotiation on the company's behalf is only disclosed to the company by the director if that disclosure is made to all its directors or to a properly convened board meeting attended by a sufficient quorum: see *Ross River Ltd v Cambridge City Football Club Ltd* [2007] EWHC 2115 (Ch), [2008] 1 All ER 1004, [2008] 1 All ER (Comm) 1028 at [213] per Briggs J. In a case of non-disclosure bribery may be established even where both the payer and the agent were unaware that they were doing anything wrong. Nonetheless, in cases where there has been disclosure to, but not informed consent by, the principal, questions of improper motive and intent may be relevant to the exercise of the court's discretion to award rescission of the contract: *Ross River Ltd v Cambridge City Football Club Ltd* [2007] EWHC 2115 (Ch) at [218], [2008] 1 All ER 1004 at [218], [2008] 1 All ER (Comm) 1028 at [218].

4 *Firmin & Sons Ltd v International Club* (1889) 5 TLR 694, CA.

5 *Orchard v Connaught Club Ltd* (1930) 46 TLR 214. See also **BAILMENT**.

6 *Williams v Curzon Syndicate Ltd* (1919) 35 TLR 475, CA. See also **BAILMENT**.

7 *Olley v Marlborough Court Ltd* [1949] 1 KB 532, [1949] 1 All ER 127, CA (notice in bedroom insufficient).

8 *Challoner v Robinson* [1908] 1 Ch 49, CA. This is subject to the protection given to persons not beneficially interested in any tenancy of the premises given by the Law of Distress Amendment Act 1908 (prospectively repealed by the Tribunals, Courts and Enforcement Act 2007 Sch 14 para 20, Sch 23 Pt 4, as from a day to be appointed under s 148(5)): see **DISTRESS** vol 13 (2007 Reissue) PARA 951.

9 See the Tribunals, Courts and Enforcement Act 2007 s 71 (not yet in force). That Act prospectively introduces a new procedure to be known as commercial rent arrears recovery ('CRAR'): see ss 72-80 (not yet in force).

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## **(2) POSITION IN TORT AS REGARDS THIRD PERSONS**

## 275. Liability in tort.

In the case of proprietary and incorporated clubs the ordinary rules as to the liability of an employer or a principal for the torts of his employees or agents apply<sup>1</sup>.

The proprietor of a proprietary club owes a common duty of care<sup>2</sup> to visitors (and to club members) and he may not by contract limit or exclude that duty<sup>3</sup>. He may, however, be able to escape liability for negligence:

- (1) if he has given a sufficient warning of any danger that a visitor may encounter on the premises so as to ensure that that person is reasonably safe<sup>4</sup>;
- (2) if, where damage is caused by the faulty execution of work done by an independent contractor, he can prove that he acted reasonably in entrusting the work to an independent contractor and took such steps as he reasonably ought to satisfy himself that the contractor was competent and the work properly done<sup>5</sup>; or
- (3) if he can prove that the visitor willingly accepted the risk<sup>6</sup>, for example the risks attendant on being present at a motor race<sup>7</sup>.

Where a proprietor so conducts his club that he causes annoyance to his neighbours he may be liable in nuisance<sup>8</sup>.

The position of an incorporated members' club is much the same as that of a proprietary club.

The liability of members of an unincorporated members' club is considered elsewhere in this title<sup>9</sup>.

1 An employer or principal is liable for torts which he has authorised or ratified: see generally **AGENCY** vol 1 (2008) PARA 150 et seq. He may also be vicariously liable for torts by an employee or agent which, while not expressly authorised or ratified, are so closely connected with what is expected in the performance of that person's duties as to make it fair and just to hold the employer or principal liable for damage sustained as a result: see eg *Mattis v Pollock (t/a Flamingo's Nightclub)* [2003] EWCA Civ 887, [2004] 4 All ER 85, [2003] 1 WLR 2158 (club doorman who had been encouraged by the proprietor of a nightclub to perform his duties in an aggressive and intimidatory manner, which included physical man-handling of customers, stabbed the friend of a man he had earlier ejected from the club, inflicting serious injuries; held that the proprietor was vicariously liable for his doorman's conduct); *Gravil v Carroll* [2008] EWCA Civ 689, [2008] ICR 1222, [2008] IRLR 829 (rugby player employed as semi-professional by rugby club punched opposing player at the start of the second half of a match, following a scrum; held that rugby club was vicariously liable). As to vicarious liability generally see **TORT** vol 97 (2010) PARA 680 et seq; and as to proprietary and incorporated clubs see PARA 209 et seq.

2 See the Occupiers' Liability Act 1957 s 2(2), where 'the common duty of care' is defined as 'a duty to take such care as in all the circumstances is reasonable to see that the visitor will be reasonably safe in using the premises for the purposes for which he is invited or permitted by the occupier to be there'. See also *Simms v Leigh Rugby Football Club Ltd* [1969] 2 All ER 923 (accident foreseeable but improbable; club not liable).

3 Occupiers' Liability Act 1957 s 3.

4 Occupiers' Liability Act 1957 s 2(4)(a).

5 Occupiers' Liability Act 1957 s 2(4)(b).

6 Occupiers' Liability Act 1957 s 2(5). As to the occupier's duties and liabilities under the Occupiers' Liability Act 1957 see **NEGLIGENCE** vol 78 (2010) PARA 29 et seq.

7 *Hall v Brooklands Auto-Racing Club* [1933] 1 KB 205, CA. See also *Murray v Harringay Arena Ltd* [1951] 2 KB 529, [1951] 2 All ER 320n, CA; *Simms v Leigh Rugby Football Club Ltd* [1969] 2 All ER 923; and **NEGLIGENCE** vol 78 (2010) PARA 72.

8 *Bellamy v Wells* (1890) 60 LJ Ch 156. See generally **NUISANCE**.

9 See PARA 231.



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### **(3) CRIMINAL LIABILITY**

#### **276. Criminal liability of individual members.**

If a member of a club, whether a members' or proprietary club, and whether incorporated or not<sup>1</sup>, steals any of the club's property, he may be convicted of theft<sup>2</sup>.

Where a club holds a club premises certificate<sup>3</sup> under the Licensing Act 2003, an individual member is guilty of an offence under that Act if:

- (1) he knowingly obtains or attempts to obtain alcohol<sup>4</sup> for consumption on club premises by a person who is drunk<sup>5</sup>;
- (2) he is drunk or disorderly and fails without reasonable excuse to leave the club premises when requested to do so by a constable<sup>6</sup>, by any person who works at the premises in a capacity, whether paid or unpaid, which authorises him to make such a request or by any member or officer of the club which holds the certificate who is present on the premises in a capacity which enables him to make such a request<sup>7</sup>;
- (3) he buys or attempts to buy alcohol for consumption on club premises by an individual aged under 18<sup>8</sup>; or
- (4) by some act or default of his, alcohol is supplied to him, or to his order, by or on behalf of the club for consumption on club premises by an individual aged under 18, or he attempts to have alcohol so supplied for such consumption<sup>9</sup>.

Heads (3) and (4) above, however, do not apply if the member is aged 18 or over, the individual is aged 16 or 17, the alcohol is beer, wine or cider for consumption at a table meal on the club premises, and the individual is accompanied at the meal by an individual aged 18 or over<sup>10</sup>. A member of a club who is aged under 18 commits an offence if alcohol is supplied to him or to his order by or on behalf of the club, as a result of some act or default of his, or if he attempts to have alcohol supplied to him or to his order by or on behalf of the club<sup>11</sup>. Other offences in connection with the sale and supply of alcohol are discussed elsewhere in this work<sup>12</sup>.

Where gambling takes place on club premises, a member who cheats is guilty of an offence under the Gambling Act 2005<sup>13</sup>. Other offences under the Gambling Act 2005 are discussed elsewhere in this work<sup>14</sup>.

It is an offence punishable with a fine for a member to smoke in an enclosed or substantially enclosed area of club premises<sup>15</sup>.

The criminal liability of individuals with regard to other offences is discussed elsewhere in this work<sup>16</sup>. In the case of an unincorporated members' club, either the club or individual members may be prosecuted for a strict liability offence, depending on the facts of the case<sup>17</sup>.

1 As to the types of clubs see PARA 204 et seq.

2 See the Theft Act 1968 ss 1, 5(1); and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 282 et seq. The Criminal Procedure Rules 2005, SI 2005/384, and the Consolidated Criminal Practice Direction do not specify how property belonging to a club is to be described but it will probably be sufficient to describe it as belonging to the club in its collective name without specifying any individual: see the Indictments Act 1915 Sch 1 r 6(2) (repealed). In the case of a registered working men's club, the property may be stated to be the property of the trustees in their proper names, as trustees for the club, without further description: Friendly Societies Act 1974 s 56. See PARA 211.

3 As to club premises certificates see **LICENSING AND GAMBLING** vol 67 (2008) PARA 85 et seq.

4 As to the meaning of 'alcohol' see **LICENSING AND GAMBLING** vol 67 (2008) PARA 30.

5 See the Licensing Act 2003 s 142(1); and **LICENSING AND GAMBLING** vol 67 (2008) PARA 137.

6 As to the office of constable generally see **POLICE** vol 36(1) (2007 Reissue) PARA 101 et seq.

7 See the Licensing Act 2003 s 143(1), (2)(a), (c); and **LICENSING AND GAMBLING** vol 67 (2008) PARA 138.

8 See the Licensing Act 2003 s 149(4)(a); and **LICENSING AND GAMBLING** vol 67 (2008) PARA 147.

9 See the Licensing Act 2003 s 149(4)(b); and **LICENSING AND GAMBLING** vol 67 (2008) PARA 147.

10 See the Licensing Act 2003 s 149(5); and **LICENSING AND GAMBLING** vol 67 (2008) PARA 147.

11 See the Licensing Act 2003 s 149(1); and **LICENSING AND GAMBLING** vol 67 (2008) PARA 147.

12 See generally **LICENSING AND GAMBLING** vol 67 (2008) PARA 132 et seq.

13 See the Gambling Act 2005 s 42; and **LICENSING AND GAMBLING** vol 68 (2008) PARA 618.

14 See generally **LICENSING AND GAMBLING** vol 68 (2008) PARA 615 et seq.

15 See PARA 263.

16 See generally **CRIMINAL LAW, EVIDENCE AND PROCEDURE**. As to offences under health and safety legislation see **HEALTH AND SAFETY AT WORK**.

17 See *R v L* [2008] EWCA Crim 1970, [2009] 1 All ER 786, [2008] All ER (D) 144 (Aug) (pollution offence under the Water Resources Act 1991 s 85), where it was held that the club, as an unincorporated association falling within the definition of 'person' in the Interpretation Act 1978 Sch 1, ought to have been the subject of the prosecution in the absence of personal culpability by individual members.

## **UPDATE**

### **276 Criminal liability of individual members**

NOTE 2--SI 2005/384 replaced: Criminal Procedure Rules 2010, SI 2010/60.

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### **277. Criminal liability of managing committee and officers.**

An officer<sup>1</sup> of an incorporated or unincorporated members' club is guilty of an offence if he publishes or concurs in publishing a written statement or account which to his knowledge is or may be misleading, false or deceptive in a material particular with intent to deceive members or creditors<sup>2</sup> of the club about its affairs<sup>3</sup>.

The Licensing Act 2003 creates numerous offences of which a club may be guilty<sup>4</sup>; for example, a club commits an offence if alcohol<sup>5</sup> is supplied by it or on its behalf to, or to the order of, a member of the club who is aged under 18, or to the order of a member of the club, to an individual who is aged under 18<sup>6</sup>. If an offence under the Licensing Act 2003 committed by a body corporate is shown to have been committed with the consent or connivance of an officer<sup>7</sup>, or to be attributable to any neglect on his part, the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly<sup>8</sup>. If the affairs of a body corporate are managed by its members, the above provision applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body<sup>9</sup>. If such an offence committed by an unincorporated association other than a partnership is shown to have been committed with the consent or connivance of an officer of the association or a member of its governing body, or to be attributable to any neglect on the part of such an officer or member, that officer or member as well as the association is guilty of the offence and liable to be proceeded against and punished accordingly<sup>10</sup>.

The Licensing Act 2003 also creates a number of offences which impose individual responsibility on officers of a club; for example where a club holds a club premises certificate<sup>11</sup> any officer of the club who is present on the club premises, knowingly allows alcohol to be supplied on those premises by or on behalf of the club to or to the order of a member of the club who is aged under 18, or to the order of a member of the club, to an individual who is aged under 18, and is present in a capacity in which he is able to prevent the supply, is guilty of an offence<sup>12</sup>.

The Gambling Act 2005 also creates numerous offences of which a club may be guilty, which are discussed elsewhere in this work<sup>13</sup>. Where such an offence is committed by a body of persons corporate or unincorporate, other than a partnership, and it is proved that the offence was committed either with the consent or connivance of an officer of the body<sup>14</sup>, or as a result of the negligence of an officer of the body, the officer, as well as the body, is guilty of the offence<sup>15</sup>.

Provision with regard to the criminal liability of officers of bodies corporate is made by a number of other statutes, for example by the Health and Safety at Work etc Act 1974<sup>16</sup>.

1 Where the affairs of a body corporate or association are managed by its members, the Theft Act 1968 s 19 applies to any statement which a member publishes or concurs in publishing in connection with his functions of management as if he were an officer of the body corporate or association: s 19(3).

2 For these purposes, a person who has entered into a security for the benefit of a body corporate or association is to be treated as a creditor of it: s 19(2).

3 See the Theft Act 1968 s 19(1); and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 320; **COMPANIES** vol 14 (2009) PARA 314.

4 As to offences in connection with the sale and supply of alcohol see generally **LICENSING AND GAMBLING** vol 67 (2008) PARA 132 et seq.

5 As to the meaning of 'alcohol' see **LICENSING AND GAMBLING** vol 67 (2008) PARA 30.

6 See the Licensing Act 2003 s 146(2); and **LICENSING AND GAMBLING** vol 67 (2008) PARA 143.

7 For these purposes, 'officer', in relation to a body corporate, means (1) a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity; or (2) an individual who is a controller of the body: Licensing Act 2003 s 187(3).

8 Licensing Act 2003 s 187(1), (8).

9 Licensing Act 2003 s 187(2).

10 Licensing Act 2003 s 187(6).

- 11 As to club premises certificates see **LICENSING AND GAMBLING** vol 67 (2008) PARA 85 et seq.
- 12 See the Licensing Act 2003 s 147(3), (4)(b); and **LICENSING AND GAMBLING** vol 67 (2008) PARA 144.
- 13 As to offences under the Gambling Act 2005 see generally **LICENSING AND GAMBLING** vol 68 (2008) PARA 615 et seq.
- 14 For these purposes, a reference to an officer of a body includes a reference to (1) a director, manager or secretary; (2) a person purporting to act as a director, manager or secretary; and (3) if the affairs of the body are arranged by its members, a member: Gambling Act 2005 s 341(3).
- 15 Gambling Act 2005 s 341(1), (2).
- 16 See the Health and Safety at Work etc Act 1974 s 37; and **HEALTH AND SAFETY AT WORK** vol 53 (2009) PARA 860.

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## **278. Jurisdiction and procedure in respect of offences.**

In general, an incorporated club<sup>1</sup> is in the same position in relation to criminal liability as a natural person and may be convicted of common law and statutory offences including those requiring mens rea<sup>2</sup>. There are, however, crimes which a corporate body is incapable of committing<sup>3</sup> or of which it cannot be found guilty as a principal<sup>4</sup>; nor can a body corporate be convicted of a crime for which imprisonment is the only punishment<sup>5</sup>.

Criminal liability may be imposed by statute on unincorporated members' clubs<sup>6</sup>; and either the club or individual members may be prosecuted for a strict liability offence, depending on the facts of the case<sup>7</sup>. Proceedings for an offence under the Licensing Act 2003<sup>8</sup> alleged to have been committed by an unincorporated association must be brought in the name of the association and not in that of any of its members<sup>9</sup> and rules of court relating to the service of documents are to have effect as if the association were a body corporate<sup>10</sup>. A fine imposed on an unincorporated association on its conviction for an offence under the 2003 Act is to be paid out of the funds of the association<sup>11</sup>. In relation to the prosecution of a body of persons unincorporate for an offence under the Gambling Act 2005<sup>12</sup>, the body is to be treated for all procedural purposes as if it were a body corporate<sup>13</sup>.

- 1 As to incorporated members' clubs see PARA 206; and as to incorporated proprietary clubs see PARA 210.
- 2 See **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 38.
- 3 See eg *DPP v Kent and Sussex Contractors Ltd* [1944] KB 146, [1944] 1 All ER 119, DC (treason). See further **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 38.
- 4 A corporation cannot be guilty as a principal of dangerous driving or of driving without due care and attention: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 38.
- 5 Except for crimes such as murder where the punishment is fixed by law, the courts generally have power to fine: see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 139. Accordingly limitation on a corporation's criminal liability by reference to punitive sanctions is of little practical importance.
- 6 See **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 39.
- 7 See *R v L* [2008] EWCA Crim 1970, [2009] 1 All ER 786, [2008] All ER (D) 144 (Aug), cited in PARA 276 note 17.

8 As to offences under the Licensing Act 2003 see generally **LICENSING AND GAMBLING** vol 67 (2008) PARA 132 et seq.

9 Licensing Act 2003 s 188(2). In proceedings for an offence brought against an unincorporated association, the Criminal Justice Act 1925 s 33 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1161) and the Magistrates' Courts Act 1980 Sch 3 (procedure: see **MAGISTRATES** vol 29(2) (Reissue) PARA 666) apply as they do in relation to a body corporate: Licensing Act 2003 s 188(4).

10 Licensing Act 2003 s 188(3).

11 Licensing Act 2003 s 188(1), (7).

12 As to offences under the Gambling Act 2005 see generally **LICENSING AND GAMBLING** vol 68 (2008) PARA 615 et seq.

13 Gambling Act 2005 s 341(6).

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## (4) CIVIL PROCEEDINGS

### 279. Unincorporated members' clubs.

An unincorporated members' club<sup>1</sup>, not being a partnership or legal entity, cannot sue or be sued in the club name<sup>2</sup>, nor can the secretary or any other officer of such a club sue or be sued on behalf of the club, even if the rules purport to give him power to sue and provide for his being sued<sup>3</sup>, unless this is permitted by statute<sup>4</sup>. Service of the claim form on the secretary, in a claim against the club, is bad<sup>5</sup>.

Where numerous persons<sup>6</sup> have the same interest<sup>7</sup> in the proceedings, the proceedings can be begun and, unless the court orders otherwise, continued by or against one or more of the club members as representatives of the other members or some of them<sup>8</sup>. A judgment in representative proceedings binds the members represented but may not be enforced against any member who is not a party to the proceedings, except with the permission of the court<sup>9</sup>.

A representation order may be made in a claim for tort, provided that the members whose names appear on the claim form are persons who may fairly be taken to represent the body of club members, and that they and all the other club members have the same interest in the proceedings<sup>10</sup>. The order will extend only to those persons who were members at the time when the cause of action arose<sup>11</sup>.

1 As to unincorporated members' clubs see PARA 205.

2 *London Association for Protection of Trade v Greenlands Ltd* [1916] 2 AC 15, HL; *Grossman v Granville Club* (1884) 28 Sol Jo 513.

3 *Gray v Pearson* (1870) LR 5 CP 568; *Evans v Hooper* (1875) 1 QBD 45, CA.

4 See eg the Friendly Societies Act 1974 s 103; and PARA 281. See also **CONTRACT** vol 9(1) (Reissue) PARA 765.

5 See *Grossman v Granville Club* (1884) 28 Sol Jo 513.

6 See *Richardson v Hastings* (1844) 7 Beav 301; *Lloyd v Loaring* (1802) 6 Ves 773; *Harrison v Marquis of Abergavenny, Constitutional Club* (1887) 57 LT 360, CA; *Andrews v Salmon* (1888) 4 TLR 490 (where

proceedings were brought against 30 members of the committee, it was ordered that the chairman of the committee and the secretary should represent the committee, although the defendants objected).

7 The question of community of interest was considered in *John v Rees* [1970] Ch 345, [1969] 2 All ER 274, where a representative order was made on the ground that there was a common interest between all the members in having the issue determined even though they disagreed as to the way in which it should be resolved. See also *Campbell v Thompson* [1953] 1 QB 445, [1953] 1 All ER 831. Cf *A-G v Carter* (1969) 113 Sol Jo 108 (members with different defences held not to have the same interest).

8 See CPR 19.6; and **CIVIL PROCEDURE** vol 11 (2009) PARA 229. As to the right to disclosure and inspection of club documents in a claim by a member on behalf of himself and all other members except the defendants who were also club members see *Richardson v Hastings* (1844) 7 Beav 301; and see generally **CIVIL PROCEDURE** vol 11 (2009) PARA 538 et seq.

9 See CPR 19.6(4); and **CIVIL PROCEDURE** vol 11 (2009) PARA 229.

10 *Campbell v Thompson* [1953] 1 QB 445, [1953] 1 All ER 831; but see *Mercantile Marine Service Association v Toms* [1916] 2 KB 243, CA; *Wood v McCarthy* [1893] 1 QB 775.

11 *Campbell v Thompson* [1953] 1 QB 445, [1953] 1 All ER 831.

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## **280. Proprietary and incorporated clubs.**

In the case of an unincorporated proprietary club<sup>1</sup>, the proprietor may sue or be sued, either in his own name or in the name of the club<sup>2</sup>. An incorporated club<sup>3</sup> may, of course, sue or be sued in its corporate name.

1 As to unincorporated proprietary clubs see PARA 209.

2 *Firmin & Sons Ltd v International Club* (1889) 5 TLR 694, CA.

3 As to incorporated clubs see PARAS 206-207, 210.

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## **281. Working men's clubs.**

If a working men's club is registered as a friendly society<sup>1</sup>, the trustees, or other officers authorised by the rules, may bring or defend any legal proceedings concerning any property, right, or claim of the club, and may sue and be sued in their proper names, without other description than the title of their office<sup>2</sup>; no proceeding is subject to abatement or discontinuance by the death, resignation, or removal from office of any officer, or by any act of his after the commencement of the proceedings<sup>3</sup>. In any proceedings against the club the claim form is sufficiently served by personally serving the officers or other persons sued, or by leaving a true copy at the registered office, or, if it is closed, by affixing a copy on the outer door<sup>4</sup>; but where personal service or service at the club's registered office is not made, a copy of the claim form must be sent to the committee at the club's registered office by registered

mail or recorded delivery<sup>5</sup>, and it must be posted at least six days before any further step is taken in the proceedings<sup>6</sup>. If the club is registered and incorporated under the Industrial and Provident Societies Acts 1965 to 1968, it may sue or be sued in its registered name<sup>7</sup>.

If a working men's club is not registered, it is in the same position as to suing or being sued as an ordinary unincorporated members' club<sup>8</sup>.

1 See PARA 211.

2 See the Friendly Societies Act 1974 s 103(1). In all proceedings concerning any property vested in the trustees, the property may be stated to be the property of the trustees, in their proper names, as trustees for the club, without further description: s 56.

3 See the Friendly Societies Act 1974 s 103(3).

4 Friendly Societies Act 1974 s 103(4).

5 See the Recorded Delivery Service Act 1962 s 1, Schedule; and **POST OFFICE** vol 36(2) (Reissue) PARAS 92, 119.

6 Friendly Societies Act 1974 s 103(5).

7 See the Industrial and Provident Societies Act 1965 s 3; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) para 2416.

8 See PARA 279.

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## **282. Learned societies and other institutions to which the Literary and Scientific Institutions Act 1854 applies.**

Incorporated institutions to which the Literary and Scientific Institutions Act 1854 applies<sup>1</sup> which are not entitled to sue and be sued by any corporate name, and unincorporated institutions, may sue or be sued in the name of the president, chairman, principal, secretary or clerk, as determined by the institution's rules, or, if the rules are silent, in the name of the person appointed for this purpose by the governing body<sup>2</sup>. Judgments recovered against the institution's nominees are enforceable against the institution's property and not the property of the nominees<sup>3</sup>.

1 As to the institutions to which the Literary and Scientific Institutions Act 1854 applies see PARA 215; and **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 939.

2 See the Literary and Scientific Institutions Act 1854 s 21; and **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 956. Any person having a claim or demand against the institution may sue the president or chairman if, on application to the governing body, some other officer or person is not nominated to be the defendant: s 21 proviso.

3 See the Literary and Scientific Institutions Act 1854 s 23; and **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 956.

Halsbury's Laws of England/CLUBS (VOLUME 13 (2009) 5TH EDITION)/2. CLUBS AND THEIR MEMBERS IN EXTERNAL RELATIONS/(5) TAXATION AND RATING/283. Income tax and corporation tax.

## (5) TAXATION AND RATING

### 283. Income tax and corporation tax.

A members' club is not ordinarily carried on with a view to making a profit and is not liable to income tax on the result of mutual transactions with its members<sup>1</sup>. The element of mutuality exists where persons associate together to achieve an object for their mutual benefit, all the contributors to the common fund being entitled to participate in the surplus and all the participators in the surplus being contributors to the common fund<sup>2</sup>. If the club facilities are extended to non-members, this element of mutuality is lacking and to that extent the resulting profits are liable to corporation tax<sup>3</sup>. Most members' clubs, other than investment clubs, do not make distributions<sup>4</sup> to their members but should they do so the provisions of the Corporation Tax Acts<sup>5</sup> will apply only to the extent to which the distributions are made out of profits chargeable to corporation tax or out of franked investment income<sup>6</sup>.

Special provisions apply to clubs that are registered under the Industrial and Provident Societies Act 1965<sup>7</sup>.

Community amateur sports clubs<sup>8</sup> are exempt from corporation tax on their trading income, interest and gift aid income and property income provided that they fulfil the statutory conditions for exemption<sup>9</sup>.

The taxation of an investment club<sup>10</sup> will depend upon its constitution. If it has avoided a liability to be registered as a partnership, the income received from dividends or interest or any capital gains<sup>11</sup> will belong to the member to whom they are paid, who must account for them in his personal income tax return. If the club is in fact a partnership then the usual partnership tax provisions apply<sup>12</sup>.

If the club is a proprietary club, the proprietor (whether he is an individual or a company) is carrying on a trade and is taxable accordingly<sup>13</sup>.

1 See *IRC v Eccentric Club Ltd* [1924] 1 KB 390, CA.

2 See *New York Life Insurance Co v Styles* (1889) 14 App Cas 381, HL; *IRC v Eccentric Club Ltd* [1924] 1 KB 390, CA.

3 See *Carlisle and Silloth Golf Club v Smith* [1913] 3 KB 75, CA (members' golf club liable to tax in respect of profit from green fees paid by visitors); *Fletcher v Income Tax Comr* [1972] AC 414, [1971] 3 All ER 1185, PC (members' club in Jamaica permitting local hotel proprietors to become members in order to secure facilities for their guests liable to tax in respect of additional payments made by proprietors). As to the charge to corporation tax see the Income and Corporation Taxes Act 1988 s 6; and **INCOME TAXATION** vol 23(1) (Reissue) PARA 6.

4 As to the meaning of 'distributions' see the Income and Corporation Taxes Act 1988 s 209; and **INCOME TAXATION** vol 23(1) (Reissue) PARA 907.

5 'The Corporation Tax Acts' means the enactments relating to the taxation of the income and chargeable gains of companies and of company distributions (including provisions relating also to income tax): see the Income and Corporation Taxes Act 1988 s 831(1); and **INCOME TAXATION** vol 23(1) (Reissue) PARA 21.

6 See the Income and Corporation Taxes Act 1988 s 490; and **INCOME TAXATION** vol 23(2) (Reissue) PARA 1407. The distributions of shares in the winding up are not distributions of the club for the purposes of the Corporation Tax Acts: see the Income and Corporation Taxes Act 1988 s 209(1); and **INCOME TAXATION** vol 23(1) (Reissue) PARA 907.

7 See the Income and Corporation Taxes Act 1988 s 486; the Income Tax Act 2007 ss 874, 887; and **INCOME TAXATION** vol 23(1) (Reissue) PARA 232.



- 8 As to community amateur sports clubs see PARA 208.
- 9 See the Finance Act 2002 Sch 18 paras 1-8.
- 10 As to investment clubs see PARA 213.
- 11 See generally **CAPITAL GAINS TAXATION**.
- 12 See the Income and Corporation Taxes Act 1988 ss 111-115; and **INCOME TAXATION** vol 23(2) (Reissue) PARA 1284.
- 13 See generally **INCOME TAXATION**.

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## 284. Value added tax.

Value added tax is payable on a supply of goods and services by way of business<sup>1</sup>. The provision by clubs of the facilities available to their members is a business activity within the scope of the tax<sup>2</sup> and most clubs<sup>3</sup> are required to register unless their total receipts are less than £67,000<sup>4</sup>. The tax is payable on the subscription income and on any trading activities of the club (such as the supply of meals); and the total turnover of any trading activities together with the amount of the subscriptions is the figure on which liability to register is based<sup>5</sup>.

Most supplies to and by charities<sup>6</sup> are zero-rated<sup>7</sup>, but are treated in all other respects as taxable supplies<sup>8</sup>.

1 See the Value Added Tax Act 1994 ss 1(2), 4; and **VALUE ADDED TAX** vol 49(1) (2005 Reissue) PARA 4.

2 See the Value Added Tax Act 1994 s 94(2); and **VALUE ADDED TAX** vol 49(1) (2005 Reissue) PARA 24.

3 Youth clubs are exempt from the tax: see the Value Added Tax Act 1994 s 31, Sch 9 Pt II Group 6 item 6; and **VALUE ADDED TAX** vol 49(1) (2005 Reissue) PARA 165. The provision of any facilities for the placing of bets or for the playing of any games of chance for a prize is also exempt, as is the granting of a right to take part in a lottery, but not (1) admission to any premises; or (2) the granting of a right to play a game of chance for a prize unless the playing of the game constitutes (a) remote gaming for the purposes of remote gaming duty; (b) prize gaming under a permit or at any qualifying centre or fair; (c) non-commercial gaming; (d) equal chance gaming at a qualifying club or institute; or (e) gaming for small prizes in a bingo hall; or (3) the provision by a club of such facilities to its members as are available to them on payment of their subscription but without further charge; or (4) the provision of anything which is a gaming machine for the purposes of s 23 (see **VALUE ADDED TAX** vol 49(1) (2005 Reissue) PARA 106); Value Added Tax Act 1994 Sch 9 Pt II Group 4 items 1, 2, notes (1), (5) (amended by SI 2006/2685; SI 2007/2163). For these purposes, 'game of chance' includes a game that involves both an element of chance and an element of skill, a game that involves an element of chance that can be eliminated by superlative skill, and a game that is presented as involving an element of chance, but does not include a sport: Value Added Tax Act 1994 Sch 9 Pt II Group 4 note (2) (notes (2)-(4) substituted by SI 2006/2685). A person plays a game of chance if he participates in a game of chance whether or not there are other participants in the game, and whether or not a computer generates images or data taken to represent the actions of other participants in the game; and 'prize' does not include the opportunity to play the game again: Value Added Tax Act 1994 Sch 9 Pt II Group 4 notes (3), (4) (as so substituted). 'Prize gaming under a permit or at any qualifying centre or fair' means the playing of a game where the provision of facilities for its playing falls within the Gambling Act 2005 s 289, s 290 or s 292 (prize gaming under a permit, at gaming and entertainment centres and fairs: see **LICENSING AND GAMBLING** vol 68 (2008) PARAS 592, 673, 674); Value Added Tax Act 1994 Sch 9 Pt II Group 4 notes (6)(a), (11) (notes (6)-(11) added by SI 2007/2163). 'Non-commercial gaming' means the playing of a game in respect of which the conditions in the Gambling Act 2005 s 299 or s 300 are complied with (non-commercial prize and equal chance gaming: see **LICENSING AND GAMBLING** vol 68 (2008) PARA 652); 'equal chance gaming at a qualifying club or institute' means the playing of a game where the provision of facilities for its playing falls within s 269 (equal chance gaming by members' or commercial clubs and miners' welfare institutes: see **LICENSING AND GAMBLING** vol 68 (2008) PARA 665); and 'gaming for small prizes in a bingo

hall' means the playing of a game where the provision of facilities for its playing falls within s 291 (bingo halls: see **LICENSING AND GAMBLING** vol 68 (2008) PARA 675) or the playing at any licensed premises (ie premises in respect of which a bingo premises licence within the meaning of Pt 8 (ss 150-215, Sch 9: see **LICENSING AND GAMBLING** vol 67 (2008) PARA 460 et seq) of bingo in respect of which the conditions set out in the Value Added Tax Act 1994 Sch 9 Pt II Group 4 note (10) are complied with: Sch 9 Pt II Group 4 notes (7)-(9) (as so added). The conditions in Sch 9 Pt II Group 4 note (10) are that (i) the amount charged for any one chance to win one or more prizes in a particular game does not exceed 50 pence; (ii) the aggregate amount charged for participating in a particular game does not exceed £500; (iii) no money prize for which a game is played exceeds £50; and (iv) the aggregate amount or value of the prizes for which a game is played does not exceed £500: Sch 9 Pt II Group 4 note (10) (as so added). See further **VALUE ADDED TAX** vol 49(1) (2005 Reissue) PARA 162.

Sports clubs may benefit from the statutory exemption for certain supplies relating to sport, sports competitions and physical education: see Sch 9 Pt II Group 10; and **VALUE ADDED TAX** vol 49(1) (2005 Reissue) PARA 169. See also *Atrium Club Ltd v Revenue and Customs Comrs* (2009) VAT Decision V20933.

4 Value Added Tax Act 1994 s 26, Sch 1 para 1(1) (amended by SI 2008/707).

5 As to the registration for VAT of clubs, associations and organisations see **VALUE ADDED TAX** vol 49(1) (2005 Reissue) PARA 78.

6 As to clubs which may qualify for charitable status see PARA 203 text and notes 13-18.

7 See the Value Added Tax Act 1994 s 30, Sch 8 Pt II Group 15; and **VALUE ADDED TAX** vol 49(1) (2005 Reissue) PARA 188. See also Sch 8 Pt II Group 5 item 2 (construction of a building intended for use for a charitable purpose); *Jeanfield Swifts Football Club v Revenue and Customs Comrs* (2008) VAT Decision V20689; and **VALUE ADDED TAX** vol 49(1) (2005 Reissue) PARA 179. As to the meaning of 'zero-rated supply' see **VALUE ADDED TAX** vol 49(1) (2005 Reissue) PARA 174.

8 See the Value Added Tax Act 1994 s 30(1); and **VALUE ADDED TAX** vol 49(1) (2005 Reissue) PARA 174.

Halsbury's Laws of England/CLUBS (VOLUME 13 (2009) 5TH EDITION)/2. CLUBS AND THEIR MEMBERS IN EXTERNAL RELATIONS/(5) TAXATION AND RATING/285. Rating.

## 285. Rating.

Non-domestic premises are liable to a charge in respect of the rating of hereditaments<sup>1</sup>. A charging authority<sup>2</sup> has a discretion, however, to decide that the chargeable amount<sup>3</sup> for a chargeable day<sup>4</sup> may be reduced<sup>5</sup> where the hereditament in question is not an excepted hereditament<sup>6</sup> and either:

- (1) the ratepayer is a registered club for the purposes of the statutory provisions relating to community amateur sports clubs<sup>7</sup> and the hereditament is wholly or mainly used for the purposes of that club, or for the purposes of that club and of other such registered clubs; or
- (2) the hereditament is wholly or mainly used for purposes of recreation, and all or part of it is occupied for the purposes of a club, society or other organisation not established or conducted for profit<sup>8</sup>.

1 See the Local Government Finance Act 1988 ss 41-43; and **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARA 121 et seq.

2 As to the meaning of 'charging authority' see the Local Government Finance Act 1988 s 144(1); and **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARA 95.

3 As to the calculation of the chargeable amount see the Local Government Finance Act 1988 ss 43(4)-(6), 44; and **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARA 60.

4 As to the meaning of 'chargeable day' see the Local Government Finance Act 1988 s 43(1)-(3); and **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARA 60.

5 It is expressly provided that where the charging authority makes a decision under these provisions, the effect must be to reduce the chargeable amount: Local Government Finance Act 1988 s 47(4)(a). The chargeable amount may be further reduced (s 47(4)(c)); or reduced to nil (s 47(4)(b)). See **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARA 81.

6 As to what is an 'excepted hereditament' see the Local Government Finance Act 1988 s 47(9); and **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARA 80.

7 le for the purposes of the Finance Act 2002 Sch 18. As to community amateur sports clubs see PARA 208.

8 See the Local Government Finance Act 1988 s 47(1), (2)(ba), (c), (3); and **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARA 80. A sporting club using its hall for club purposes but letting it out to non-members for the benefit of club funds is not established for profit: *Newton-le-Willows Cricket etc Club v Newton-le-Willows UDC Rating Officer* (1966) 12 RRC 32, DC. As to sports clubs run for employees see also *Royal London Mutual Insurance Society Ltd v Hendon Borough Council* (1958) 3 RRC 76, 122 JP 310; *Distillers' Sports Club v Esher UDC* (1957) 1 RRC 217, 50 R & IT 148; *London Transport Executive Sports Club v Heston and Isleworth Borough Council* (1957) 1 RRC 208, 50 R & IT 171; *Gravesend Cricket, Tennis and Bowls Co v Gravesend Borough Council* (1957) 50 R & IT 613.

Halsbury's Laws of England/CLUBS (VOLUME 13 (2009) 5TH EDITION)/2. CLUBS AND THEIR MEMBERS IN EXTERNAL RELATIONS/(5) TAXATION AND RATING/286. Excise duties on alcohol and gambling.

## **286. Excise duties on alcohol and gambling.**

Spirits<sup>1</sup>, beer<sup>2</sup>, wine<sup>3</sup>, made-wine<sup>4</sup> and cider<sup>5</sup> (including perry) are subject to excise duty under the Alcoholic Liquor Duties Act 1979<sup>6</sup>. That duty is discussed elsewhere in this work<sup>7</sup>.

The Betting and Gaming Duties 1981 imposes a number of taxes on gambling, in the form of excise duties, which are discussed elsewhere in this work<sup>8</sup>. Those duties most relevant to clubs are bingo duty<sup>9</sup> and amusement machine licence duty<sup>10</sup>. The Finance Act 1993 makes provision relating to lottery duty<sup>11</sup> and the Finance Act 1997 imposes gaming duty<sup>12</sup>, which are also discussed elsewhere in this work<sup>13</sup>.

1 As to the meaning of 'spirits' see **CUSTOMS AND EXCISE** vol 12(2) (2007 Reissue) PARA 400.

2 As to the meaning of 'beer' see **CUSTOMS AND EXCISE** vol 12(2) (2007 Reissue) PARA 401.

3 As to the meaning of 'wine' see **CUSTOMS AND EXCISE** vol 12(2) (2007 Reissue) PARA 402.

4 As to the meaning of 'made-wine' see **CUSTOMS AND EXCISE** vol 12(2) (2007 Reissue) PARA 403.

5 As to the meaning of 'cider' see **CUSTOMS AND EXCISE** vol 12(2) (2007 Reissue) PARA 404.

6 See the Alcoholic Liquor Duties Act 1979; and **CUSTOMS AND EXCISE** vol 12(2) (2007 Reissue) PARA 398 et seq.

7 See **CUSTOMS AND EXCISE** vol 12(2) (2007 Reissue) PARA 398 et seq.

8 See **LICENSING AND GAMBLING** vol 68 (2008) PARA 745 et seq.

9 See **LICENSING AND GAMBLING** vol 68 (2008) PARA 766 et seq.

10 See **LICENSING AND GAMBLING** vol 68 (2008) PARA 771 et seq.

11 See **LICENSING AND GAMBLING** vol 68 (2008) PARAS 789-793.

12 See **LICENSING AND GAMBLING** vol 68 (2008) PARA 759 et seq.

13 See notes 11-12.

Halsbury's Laws of England/CLUBS (VOLUME 13 (2009) 5TH EDITION)/3. DISSOLUTION OF CLUBS/287. Unincorporated members' clubs and unregistered working men's clubs.

### 3. DISSOLUTION OF CLUBS

#### 287. Unincorporated members' clubs and unregistered working men's clubs.

The rules of a members' club may properly provide for its dissolution and winding up. The High Court has jurisdiction to dissolve and wind up an unincorporated members' club or unregistered working men's club<sup>1</sup>, but it will not, as a general rule, interfere where the rules provide for a dissolution, nor even in the absence of such provision, unless it clearly appears that the majority of the members desire to dissolve the club, or there are special circumstances which make it impossible or impracticable to continue to carry it on<sup>2</sup>. The court has jurisdiction under the Insolvency Act 1986<sup>3</sup> to wind up compulsorily, as an 'unregistered company', a working men's club which is not registered as a friendly society<sup>4</sup> but it has no such jurisdiction in the case of an unincorporated members' club<sup>5</sup> unless there is something in the club's rules indicating that it is the type of association that can be wound up compulsorily under that Act<sup>6</sup>.

Dissolution may, but need not necessarily, be inferred from prolonged inactivity<sup>7</sup>.

On the dissolution of a members' club the property and assets are sold and realised, and after the discharge of the debts and liabilities of the club the surplus is divisible equally amongst the members for the time being, other than the honorary members, subject to any provisions in the rules to the contrary<sup>8</sup>. A claim will lie in the Chancery Division for the administration of the assets if it is alleged that they are not being properly administered<sup>9</sup>, and such a claim may be brought by one member suing on behalf of himself and all other members except the defendants<sup>10</sup>.

1 *Re Lead Co's Workmen's Fund Society* [1904] 2 Ch 196. As to registered working men's clubs see PARA 290.

2 *Blake v Smither* (1906) 22 TLR 698.

3 See the Insolvency Act 1986 ss 220-224; and **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(4) (2004 Reissue) PARA 1147 et seq.

4 See *Re Victoria Society, Knottingley* [1913] 1 Ch 167 (decided under previous legislation).

5 *Re St James's Club* (1852) 2 De GM & G 383.

6 See *Re Witney Town Football and Social Club* [1994] 2 BCLC 487, [1993] BCC 874, where it was held that the fact that the club was set up for a specific purpose and that the net assets on dissolution were not to be distributed to the members could not have the effect of making it the type of association that could be wound up under the Insolvency Act 1986 s 220.

7 *Re GKN Bolts and Nuts Ltd (Automatic Division) Birmingham Works Sport and Social Club, Leek v Donkersley* [1982] 2 All ER 855, [1982] 1 WLR 774.

8 *Brown v Dale* (1878) 9 ChD 78. See *Re Blue Albion Cattle Society* [1966] CLY 1274 (funds of moribund society distributed to all members still on the society's books at the date of dissolution, irrespective of whether their subscriptions were in arrears); *Re St Andrew's Allotment Association's Trusts, Sargeant v Probert* [1969] 1 All ER 147, [1969] 1 WLR 229 (assets of the societies distributed per capita to the members as ascertained at the date of sale); *Re Sick and Funeral Society of St John's Sunday School, Golcar* [1973] Ch 51, [1972] 2 All ER 439; *Re British Transport Commission (Southampton) Sports and Social Club* [2009] All ER (D) 94 (Jun).

9 *Re St James's Club* (1852) 2 De GM & G 383; *Richardson v Hastings* (1844) 7 Beav 301 at 323; *Richardson v Hastings and Emly* (1847) 11 Beav 17.

10 *Richardson v Hastings and Emly* (1847) 11 Beav 17 (where two of the members of the managing committee had obtained possession of the assets and applied them in the winding up, and it was held that one member might, on behalf of himself and the other members, sue for an account of the receipts and disbursements, without asking for an order for a general winding up by the court).

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### **288. Proprietary clubs.**

The proprietor of a proprietary club is not, in the absence of an express agreement to that effect, bound to continue carrying it on beyond the date of the expiration of the current subscriptions, and the proprietor can therefore dissolve the club by simply refusing to accept further subscriptions. Where an incorporated proprietary club has been closed by the proprietor before the term of current subscriptions has expired and is being wound up, members may prove for the proportion of their subscriptions of which they have lost the benefit for the current year and in respect of damages for the loss of the amenities of the club<sup>1</sup>.

1 See *Re Curzon Syndicate Ltd* (1920) 149 LT Jo 232.

Halsbury's Laws of England/CLUBS (VOLUME 13 (2009) 5TH EDITION)/3. DISSOLUTION OF CLUBS/289. Incorporated clubs.

### **289. Incorporated clubs.**

The dissolution and winding up of incorporated clubs are governed by the law relating to the dissolution and winding up of the appropriate class of body corporate<sup>1</sup>.

1 As regards companies under the companies legislation see **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(3) (2004 Reissue) PARA 435 et seq; and as regards societies registered under the Industrial and Provident Societies Acts 1965 to 1968 see **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(3) (2004 Reissue) PARAS 435-436. Such clubs do not cease to exist unless they are dissolved by one of the methods prescribed by statute, or their registration has been cancelled: *Boyle v Collins* [2004] EWHC 271 (Ch), [2004] 2 BCLC 471, [2004] All ER (D) 287 (Feb).

Halsbury's Laws of England/CLUBS (VOLUME 13 (2009) 5TH EDITION)/3. DISSOLUTION OF CLUBS/290. Registered working men's clubs.

### **290. Registered working men's clubs.**

A working men's club which is registered as a friendly society<sup>1</sup> may be wound up compulsorily as an 'unregistered company'<sup>2</sup>, or may be dissolved<sup>3</sup> in any of the following ways:

- (1) upon the happening of any event declared by the rules to be the termination of the club<sup>4</sup>; or
- (2) by an instrument of dissolution<sup>5</sup> approved by a special resolution of the club<sup>6</sup>; or
- (3) in certain cases<sup>7</sup>, by the award of the Financial Services Authority<sup>8</sup>.

A club does not necessarily cease to exist when its amenities and buildings are destroyed<sup>9</sup>.

1 As to registered working men's clubs see PARA 211.

2 See *Re Irish Mercantile Loan Society* [1907] 1 IR 98; and see the Insolvency Act 1986 ss 220-224; and **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(4) (2004 Reissue) PARA 1147 et seq.

3 The instrument may be signed by a duly authorised agent: *Dennison v Jeffs* [1896] 1 Ch 611.

4 See the Friendly Societies Act 1974 s 93(1)(a); and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 2261.

5 As to the instrument of dissolution see the Friendly Societies Act 1974 s 94; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 2264.

6 See the Friendly Societies Act 1974 s 93(1)(b); and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 2261.

7 See under the Friendly Societies Act 1974 s 95(3): see **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 2272.

8 See the Friendly Societies Act 1974 s 93(1)(c); and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 2261. As to the Financial Services Authority see **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 4 et seq.

9 See *Re Stamford Working Men's Club* (1953) Times, 29 April, CA; and PARA 293.

Halsbury's Laws of England/CLUBS (VOLUME 13 (2009) 5TH EDITION)/3. DISSOLUTION OF CLUBS/291. Investment clubs.

## **291. Investment clubs.**

The rules of an investment club<sup>1</sup> should make specific provision for its winding up by resolution of the members.

1 See PARA 213.

Halsbury's Laws of England/CLUBS (VOLUME 13 (2009) 5TH EDITION)/3. DISSOLUTION OF CLUBS/292. Learned societies and other institutions to which the Literary and Scientific Institutions Act 1854 applies.

## **292. Learned societies and other institutions to which the Literary and Scientific Institutions Act 1854 applies.**

Three-fifths or any larger number of members may determine that a learned society or other institution to which the Literary and Scientific Institutions Act 1854 applies<sup>1</sup> is to be dissolved, either immediately or at the time then agreed upon<sup>2</sup>. Upon such a dissolution, the property remaining, after all debts and liabilities have been satisfied, is not divisible among the members. It must be given to some kindred institution, chosen by the members of the dissolving institution, or in default by the judge of the county court, notwithstanding that the rules contain a provision for the division of the property of the society upon dissolution among the shareholders<sup>3</sup>.

1 As to such societies and institutions see PARA 215.

2 See the Literary and Scientific Institutions Act 1854 s 29; and **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 958.

3 See the Literary and Scientific Institutions Act 1854 s 30; and **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 959. This restriction does not apply to an institution founded or established by the contributions of shareholders in the nature of a joint stock company: s 30 proviso.

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### **293. Where a club may have ceased to exist.**

If a club has ceased to exist (for example, as a consequence of the destruction of its premises and property), but there is in fact property of the club (for example, compensation for the destruction which is payable), that property will belong to the Crown as bona vacantia<sup>1</sup>. If, however, although the club has not been active for many years, it has not ceased to exist and some members remain, those members may make arrangements for winding it up<sup>2</sup>.

1 See *Re Stamford Working Men's Club* (1952) Times, 24 October; on appeal (1953) Times, 29 April, CA (application was made to the High Court and it was held that the property was bona vacantia, but on further evidence being adduced on appeal and existing members being found by advertisement the appeal was allowed). Cf *Re Trusts of the Brighton Cycling and Angling Club* (1956) Times, 7 March (assets of a club which had ceased to exist were declared bona vacantia). As to bona vacantia generally see **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(4) (2004 Reissue) PARA 933; **CROWN PROPERTY** vol 12(1) (Reissue) PARA 235 et seq.

2 *Re Stamford Working Men's Club* (1953) Times, 29 April, CA.